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1 THURSDAY, JANUARY 23, 2025

2 BOISE, IDAHO

3 * * *

4
5 (Closed proceedings.)

6 THE COURT: Let's go on the record in State v.
7 Kohberger, CR01-24-31665. Present in the courtroom
8 today are the defendant with counsel, Ms. Taylor and
9 Ms. Massoth. Is Mr. Logsdon here?

10 MS. TAYLOR: Mr. Logsdon is here, Your Honor.

11 THE COURT: For the State we have Mr. Thompson,
12 Mr. Nye, and Ms. Jennings.

13 MR. THOMPSON: Yes, Your Honor.

14 THE COURT: We have a number of people in the
15 courtroom. Are they all part of counsel team or
16 witnesses that are to be called today?

17 MS. TAYLOR: Both, Your Honor.

18 THE COURT: Outside of those two categories,
19 that's everybody?

20 MS. TAYLOR: Everybody here is a consultant or
21 witness. I'm not quite sure who's on the prosecutor's
22 side.

23 MR. THOMPSON: Ms. Allen is from the Attorney
24 General's Office, and Ms. Workman is our victim-witness
25 coordinator.

1 THE COURT: All right. Before we get going
2 this morning, I understand the first portion of today's
3 hearing will be to put on evidence related to the IGG
4 suppression and Franks issue.

5 In terms of witnesses, what are we
6 doing in terms of excluding and/or exceptions to
7 exclude based on experts?

8 MS. TAYLOR: Your Honor, the parties have
9 stipulated that the witnesses may be inside the
10 courtroom for the entirety of the proceeding. The State
11 has their witness that's a remote witness, and that's
12 fine for that person to listen in.

13 THE COURT: So that person is appearing
14 remotely?

15 MR. NYE: Yes, Your Honor, that's correct.

16 THE COURT: Do we have them up?

17 THE CLERK: They are not connected.

18 THE COURT: They are not connected. Did you
19 give them a link? Did you ask for a link?

20 MR. NYE: Yeah, they let us know they received
21 the link. But we're okay getting started, Your Honor.
22 He doesn't need to be here.

23 THE COURT: I was told by my law clerk that
24 Defense intends to refer to exhibits that they don't
25 have copies here today for the Court.

1 MS. TAYLOR: Your Honor, there was a
2 stipulation that all of the exhibits that were attached
3 to the IGG motion and the Franks motion would be
4 admitted. I'm happy to give the Court my copies. That
5 was about a thousand pages worth of stuff, so I did not
6 print and haul down an extra copy, but I'm happy to give
7 the Court my copy if the Court wants a hard copy.

8 THE COURT: I've got a copy in the file. The
9 only problem is trying to find what you're talking about
10 quickly if you're referring to a distinct item within
11 that. Typically I'm provided copies of the specific
12 exhibits witnesses go over. I'll do my best but...

13 MS. TAYLOR: I'm happy to provide the Court my
14 copy or use the Elmo so the Court can see the display.

15 THE COURT: All right. We'll do what we can.
16 In the future, if you know what exhibits you're going to
17 be talking about in particular, you should have two
18 copies available for the Court.

19 MS. TAYLOR: I will, Your Honor.

20 THE COURT: Anything to take up before we get
21 started?

22 MR. NYE: No, Your Honor. I don't believe so.

23 MS. TAYLOR: I don't believe so, either. Thank
24 you.

25 THE COURT: All right. The Defense may call

1 its first witness.

2 MS. TAYLOR: Your Honor, the Defense would call
3 Brett Payne.

4 THE COURT: Just to make sure, we're not live,
5 right, Sandra?

6 THE CLERK: Do you solemnly swear or affirm the
7 testimony you're about to give now before the Court is
8 the truth, the whole truth, and nothing but the truth?

9 DET. CPL. PAYNE: I do.

10 THE CLERK: Thank you.

11 MS. TAYLOR: May I approach the podium,
12 Your Honor?

13 THE COURT: Yes, please.

14

15 DETECTIVE CPL. BRETT PAYNE,
16 having been duly sworn, testified as follows:

17

18 DIRECT EXAMINATION

19 BY MS. TAYLOR:

20 Q. Good morning.

21 A. Good morning, ma'am.

22 Q. Will you state your full name, please?

23 A. Brett Payne.

24 Q. How is your last name spelled?

25 A. P-A-Y-N-E.

1 Q. What do you do for a living?

2 A. I'm the Detective Corporal at Moscow PD
3 currently.

4 Q. How long have you been at Moscow Police
5 Department?

6 A. Almost seven years now.

7 Q. Prior to Moscow Police Department, did
8 you have law enforcement experience?

9 A. Yes, ma'am.

10 Q. What was that?

11 A. I was in the Military Police Corps, the
12 U.S. Army, for three years prior to coming to Moscow
13 PD.

14 Q. Are you POST certified?

15 A. Yes, ma'am.

16 Q. In the course of your responsibilities
17 with Moscow Police, were you handling an investigation
18 involving homicides at 1122 King Road?

19 A. Yes, ma'am.

20 Q. What was your role?

21 A. I was assigned lead detective after
22 about the first 24 hours in that case.

23 Q. And does that mean that you have
24 responsibility for the case and evidence?

25 A. Yes, ma'am.

1 Q. Okay. As such, did you participate in
2 a search for a suspect?

3 A. Yes, ma'am.

4 Q. And when was the first time you heard
5 Bryan Kohberger's name?

6 A. The first time I heard Bryan
7 Kohberger's name was December 19, 2022.

8 Q. And what was that a result of?

9 A. That was a result of investigative
10 genetic genealogy that was being undertaken by the
11 FBI. We had a phone call that evening, and we were
12 told Bryan Kohberger's name.

13 Q. And before that, Mr. Kohberger was not
14 on your radar?

15 A. No, ma'am.

16 Q. Before December 19th, was the FBI CAST
17 team member collocated with you?

18 A. Yes, ma'am.

19 Q. How long had he been collocated with
20 you?

21 A. I don't remember exactly, but it had
22 been several weeks at that point.

23 Q. And was that Nicholas Ballance?

24 A. Yes, ma'am.

25 Q. What other FBI team members were

1 collocated with you?

2 A. Goodness. A lot. We had Technical
3 Assistant Maria Tyndall, SA Jacobson, and numerous
4 other FBI special agents that were there to assist.

5 Q. By the time it was December 19th and
6 you first heard of Bryan Kohberger's name, had you
7 reviewed videotapes?

8 A. Yes, ma'am.

9 Q. How many hours of videotapes do you
10 think you reviewed?

11 A. I don't remember. A lot. I can't give
12 you an accurate representation.

13 Q. In those videotapes, did you focus in
14 on any particular ones that were of interest to you?

15 A. Yes, ma'am. In particular would be
16 the -- are you talking about addresses that were --
17 how would you like me to refer to them?

18 Q. How you nicknamed the cameras.

19 A. So the first one was from 1112 King
20 Road. It was a surveillance camera, an exterior
21 surveillance camera on a house that was immediately to
22 the northeast of 1122 King Road. There was some
23 footage from a Linda Lane camera, I forget the address
24 off the top of my head. There was footage from the
25 A&W, which is at the corner of Lauder and South Main,

1 or Highway 95. There was footage from an address on
2 Indian Hills. There was also footage from a Ridge
3 Road camera. And that's how we referred to them was
4 basically by those names.

5 Q. With those references in mind and
6 keeping December 19th in mind, which of those cameras
7 were your focus before you learned of Bryan
8 Kohberger's name?

9 A. I would say all of them were of
10 importance before that.

11 Q. And it was later that other cameras
12 became important; is that right?

13 A. Those were the main ones we relied upon
14 for vehicles, in particular, is what those ones were.

15 Q. I'm going to return to that in just a
16 minute, but I want to talk to you about interviews.

17 Did you interview any people in
18 relation to the case before December 19th?

19 A. Yes, ma'am.

20 Q. And did other officers interview
21 people?

22 A. Yes, ma'am.

23 Q. Were some of those people the roommates
24 of the people at 1122 King?

25 A. Yes, ma'am.

1 Q. Did you review other officers' work, as
2 well?

3 A. Yes, ma'am.

4 Q. Did you have regular meetings with
5 other officers about the status of the investigation?

6 A. Yes, ma'am.

7 Q. Did you have any role in deciding to
8 pursue investigative genetic genealogy?

9 A. Yes, ma'am. It was a collaborative
10 decision amongst the command team to go that route,
11 but, yes, I was a part of that.

12 Q. Were you part of the discussions during
13 the process of the identification?

14 A. Yes, ma'am.

15 Q. Were you aware that Othram Laboratories
16 began the work on the investigative genetic genealogy?

17 A. Yes, ma'am.

18 Q. What kinds of information did you
19 receive from Othram Laboratories?

20 A. I don't remember what was received from
21 Othram directly. I knew they were conducting their
22 specific type of work. I don't remember exactly what
23 they provided to us.

24 Q. Did you receive some documents from
25 them?

1 A. Yes, ma'am.

2 Q. Okay. Do you know how many documents
3 you received from them?

4 A. I do not.

5 Q. Was it one time or more than one time?

6 A. I don't remember.

7 Q. Were you part of the discussion to take
8 the work from Othram and go to the FBI?

9 A. Yes, ma'am.

10 Q. Why was that decision made?

11 A. From my understanding -- granted, this
12 is my first encounter with investigative genetic
13 genealogy, so, again, as a collaborative discussion we
14 decided that because the Idaho State Police Lab and
15 Othram had essentially exhausted their resources --
16 this is how I understood it -- that we would move to
17 the FBI because they had more resources available to
18 pursue this particular avenue.

19 Q. Do you know what more resources the FBI
20 had?

21 A. The only thing I'm privy to was that
22 they had more databases that they could compare the
23 sample to. That was the extent of my knowledge.

24 Q. Do you have familiarity with the
25 databases and the rules that apply to those?

1 A. No, ma'am.

2 Q. I'll save those questions.

3 What was your communications with the
4 FBI about the IGG?

5 A. So our communications were just via
6 telephone. The sample was sent to the FBI -- I don't
7 remember the date it was given over to them -- but
8 after that there was very few conversations; and if
9 they happened at all, they were just telephonic
10 advising us that the process was still in the works
11 and they would let us know when or if they had
12 anything of interest for us.

13 Q. Do you know what files or documents
14 went to the FBI from Othram?

15 A. I do not remember.

16 Q. Did you receive documents from the FBI?

17 A. In relation to IGG?

18 Q. Yes.

19 A. I believe after the fact, after we
20 received Kohberger's name, we did receive documents,
21 but I don't remember what they were.

22 Q. Do you know how many documents related
23 to IGG you received from the FBI?

24 A. No, ma'am. I believe as part of
25 discovery it was in the thousands of pages, but that's

1 the best of my knowledge.

2 Q. Thank you for that.

3 All right. So once you have
4 Mr. Kohberger identified, what's your understanding of
5 what that meant to have his name?

6 A. Just in relation to the overall
7 investigation, is that --

8 Q. Yes.

9 A. So the only thing that was given to us
10 was Bryan Kohberger's name; that was it. It was
11 conveyed to us by the FBI that it was to be taken as
12 no more than a tip; that was it. So once we received
13 his name, we set about doing basically an independent
14 verification of whether or not he was involved in this
15 crime.

16 Q. I'm going to talk to you about that a
17 little bit more, but do you know why the FBI connected
18 Bryan Kohberger to the case?

19 A. So December 20th, if memory serves, we
20 had a secondary meeting with the FBI via Teams, if
21 memory serves, and they simply walked us through the
22 family tree, how they did that. Now, I don't remember
23 the details of all that -- it was an in-depth
24 conversation that, to be honest, is above my head --
25 but they essentially worked their way through the

1 family tree and arrived at a conclusion that Bryan
2 Kohberger was a person we should look into as a tip.
3 That's the extent of my knowledge of how they did
4 that.

5 Q. How was Bryan Kohberger, the name you
6 received as a tip, linked to the case?

7 A. He wasn't until after December 19th.

8 Q. What item of evidence did they link
9 Bryan Kohberger to?

10 A. I'm not sure what you're asking. As
11 far as before December 19th, is that what you're
12 referring to?

13 Q. Yeah.

14 A. We didn't have one at that point.

15 Q. Why did you become interested in
16 learning the identity of Bryan Kohberger?

17 A. Not quite sure I understand your
18 question. We were interested in anyone who would have
19 been involved in this. The DNA from the knife sheath
20 was obviously the one thing we had that we thought was
21 a very strong piece of evidence in this case, so it
22 was that particular piece that we pursued as a
23 potential avenue of identifying a suspect.

24 Q. Is it your understanding that the FBI's
25 work said that it was Bryan Kohberger's DNA on the

1 sheath?

2 A. That is not my understanding.

3 Q. What is your understanding?

4 A. My understanding is that the FBI
5 concluded that Bryan Kohberger was a possible source
6 of DNA that we should look into. They did not, to my
7 knowledge, at any point say Bryan Kohberger's DNA is
8 on the knife sheath. That was never conveyed to me.

9 Q. On December 20th when that happened,
10 when he's somebody you should look into, what did you
11 do?

12 A. We had already started looking into him
13 from the previous evening. So that day,
14 December 20th, we began going through basically our
15 sort of standard investigative procedures that we had
16 been doing throughout the investigation for various
17 leads, to include basic DMV searches, NCIC offline
18 returns, NCIC searches. We have a database called
19 TLO, which is a credit-based search we use to find
20 basic information. So we started doing all those
21 things looking for information on Mr. Kohberger.

22 Q. And what you found is that he didn't
23 have a criminal history; is that right?

24 A. Correct.

25 Q. Talk to me about going to Pennsylvania

1 for the trash pull.

2 A. Well, I was not in Pennsylvania for the
3 trash pull.

4 Q. I'll ask somebody else that later.

5 All right. So after you received Bryan
6 Kohberger's name -- and he hasn't been on your radar
7 at all before; is that right?

8 A. Correct.

9 Q. All right. You had pursued interviews
10 and surveillance video. Had you pursued evidence
11 found inside the scene at 1122 King?

12 A. Yes, ma'am.

13 Q. What efforts did you make to pursue
14 Unknown Male B?

15 A. You have to be more specific. I don't
16 remember exactly where Unknown Male B came from.

17 Q. If I told you the lab report showed
18 Unknown Male B came from a blood spot on the handrail
19 going between the second and the first floor, does
20 that help jog your memory?

21 A. Yes, ma'am.

22 Q. Why did you not pursue that person?

23 A. At that point in time, we had already
24 received Mr. Kohberger's name, and from what my
25 understanding was, entering another DNA profile into

1 CODIS would remove the previous one we had from the
2 knife sheath. So if memory serves, the discussion was
3 we'll hold off, we'll stay with the one from the knife
4 sheath; if we need to, we can address the Unknown
5 Male B at a later time.

6 Q. I want to make sure I understand your
7 testimony. Were you not aware of Unknown Male B until
8 after December 19th when you knew Bryan Kohberger's
9 name?

10 A. No, ma'am. I was aware of that before,
11 yes.

12 Q. How about Unknown Male D?

13 A. Again, you're going to have to be more
14 specific.

15 Q. If I told you Unknown Male D came from
16 a lab report from a sample of blood on some gloves
17 outside the house, does that refresh your memory?

18 A. Yes, ma'am, it does.

19 Q. You're aware of that too?

20 A. Yes, ma'am.

21 Q. I want to back up and talk about the
22 affidavits. I think you told me in a prior hearing
23 that you were the person that wrote Exhibit A, or the
24 affidavit in support of the search warrants, when it
25 came to looking for things about Bryan Kohberger. Did

1 I understand that right?

2 A. Yes, ma'am.

3 Q. And that affidavit, when you began, was
4 that on about December 23rd to get records?

5 A. As far as when I started writing the
6 affidavit, is that what you're referring to?

7 Q. The first search warrant that applied
8 to Bryan Kohberger.

9 A. I believe it was December 23rd, yes.

10 Q. When did you begin writing that
11 affidavit?

12 A. I began writing that affidavit long
13 before that. It had been a running affidavit because
14 at the beginning of it, there's the walk-through of
15 the crime scene, there's numerous things. It was a
16 living document, so we'd just add information to it.
17 I'd say that document started -- I don't know,
18 couldn't give an exact date -- a couple weeks prior to
19 that, even before we knew Mr. Kohberger's name.

20 Q. Help me understand what parts were
21 added after you knew Mr. Kohberger's name.

22 A. Well, to walk down the line best I can,
23 so obviously there's the initial component, which is
24 the crime scene, the testimony from the roommates.
25 Then after that it shifts to -- I believe the first

1 mention of or the first component was that Bryan
2 Kohberger was pulled over by Corporal Duke on a
3 traffic stop. He was also contacted by WSU Police,
4 his vehicle was ran by WSU PD officers. Then after
5 that we included -- trying to walk down through the
6 thing without it in front of me -- then we included
7 the vehicle information that was about the white
8 Elantra. And after that we included his residence and
9 that he had hit LPRs, or his vehicle had been seen on
10 LPRs between Moscow -- or Pullman, excuse me, and
11 Pennsylvania. And then there was the component about
12 where he lived in Pennsylvania.

13 Q. Let's go back to that time before you
14 started adding the traffic stop. That affidavit
15 contained some information that you gained from other
16 officers; is that right?

17 A. Yes, ma'am.

18 Q. Okay. And you didn't write large parts
19 of that affidavit; is that also right?

20 A. I took a lot of language from experts
21 and other officers and agents, that's correct.

22 Q. Are you aware your affidavit, your
23 living document, was claimed by other people as their
24 own original document, not giving you credit but
25 claimed as their own. Are you aware of that?

1 A. Yes, ma'am.

2 Q. Are you aware that -- you probably know
3 because Nicholas Ballance was collocated with you.
4 Did the two of you continually work on language to
5 satisfy what the prosecutor wanted to see for probable
6 cause?

7 A. Yes, ma'am.

8 Q. Did you and Nicholas Ballance produce a
9 map to show a possible route of travel for your
10 suspect?

11 A. Yes, ma'am.

12 MS. TAYLOR: And, Your Honor, I am at
13 Defendant's 1A. I can either put it up here or approach
14 the Court with the map.

15 THE COURT: Can I see what you're referring to?
16 There's been a lot of Exhibit As in this case.

17 Just as housekeeping, you had mentioned
18 you stipulated to the admission of sounds like a large
19 chunk of records, a thousand pages?

20 MS. TAYLOR: Yes, Your Honor. It's the stack
21 of exhibits that came behind the amended Franks motion
22 from the Defense.

23 THE COURT: Okay. And you want me to search
24 through that to find stuff that you want me to rely on?

25 MS. TAYLOR: I don't. I'm happy to give you my

1 copy.

2 THE COURT: No, I don't mean that.

3 As you know, I entered an order in this
4 case that I'm not going to scour the record to find
5 things that support your claims in this case. You
6 have to cite them in particularity. And so I get
7 concerned when I'm told I'm going to get a large
8 document to be admitted that doesn't sound like it's
9 going to be the focus of the actual hearing, or much
10 of it.

11 MS. TAYLOR: Well, Your Honor, I do have quite
12 a few more questions for this detective. I'm trying to
13 be mindful of my role here with him as far as Franks and
14 his work and IGG. But when it's time for me to argue
15 Franks, what I planned to do was to argue from the
16 exhibits, identify them for the Court and hand the Court
17 my copy. So I don't expect the Court to thumb through
18 all the D1, D2s. I just didn't bring another thousand
19 pages with me.

20 THE COURT: I understand.

21 My concern wasn't so much what I had in
22 front of me as actual paper. My concern is littering
23 the record with things that are not referred to. If
24 you're going to refer to specific documents in there,
25 that's fine, but don't expect me to go looking at

1 things you don't refer to, necessarily.

2 MS. TAYLOR: Oh, I absolutely understand that,
3 Your Honor. Those were all put in so that counsel would
4 be advised --

5 THE COURT: The fact that I admit this group of
6 documents does not mean that it is something that can be
7 relied on, absent you actually using it.

8 MS. TAYLOR: Absolutely. I understand that,
9 Your Honor. I don't expect the Court to read my mind.
10 Thank you for that.

11 Q. Detective, I'm going to attempt to put
12 this map up here.

13 Is that the map you and Nicholas
14 Ballance came up with to help with probable cause?

15 A. Yes, ma'am.

16 Q. Thank you.

17 I'm going to leave that there for just
18 a minute and I'm going to ask you some other
19 questions.

20 I want to back up to the part of the
21 first affidavit. This is asking for AT&T records; is
22 that right?

23 A. Yes, ma'am.

24 Q. And this AT&T record, is that the first
25 set, 48 hours, of AT&T records?

1 A. Yes, ma'am. I believe so.

2 Q. And are these AT&T records related to a
3 phone Mr. Kohberger had?

4 A. Yes, ma'am.

5 Q. All right.

6 And so in doing this affidavit, you
7 have this working document, and I'm going to start
8 with D.M. If I say D.M., do you know who I'm talking
9 about?

10 A. Yes, ma'am. I do.

11 Q. And she is one of the roommates; is
12 that right?

13 THE COURT: We're sealed. You can use the
14 name.

15 MS. TAYLOR: I can use the name. Trying to get
16 a habit.

17 BY MS. TAYLOR:

18 Q. [Redacted], who is she?

19 A. She was one of the surviving roommates.

20 Q. And how many times was [redacted]
21 interviewed by law enforcement at the time you wrote
22 this December 23rd report?

23 A. If memory serves, it was four, I think;
24 three or four.

25 Q. In the affidavit you wrote a statement

1 that she had heard Kaylee go upstairs, yell "someone's
2 here," and run back downstairs; is that correct?

3 A. Yes, ma'am.

4 Q. And you used the words, "She thought
5 she heard." Do you remember that?

6 MS. JENNINGS: Your Honor, I'm going to object.
7 I'm objecting based on the scope of what this testimony
8 is supposed to be. My understanding was it was limited
9 solely to the issue of Franks and IGG.

10 THE COURT: I was just about to ask the
11 question. I don't recall the statements of [redacted]
12 being a subject of a motion to suppress separate from
13 the Franks issue. Am I correct about that?

14 MS. TAYLOR: That is correct, Your Honor.

15 THE COURT: Okay. So we're not at a Franks
16 hearing on that issue. The only issue we are at a
17 Franks hearing on is the IGG.

18 MS. TAYLOR: All right. Well, let me
19 rephrase -- let me start from a different place.

20 THE COURT: I'll sustain the objection.

21 BY MS. TAYLOR:

22 Q. Let's go to the part of your affidavit
23 for December 23rd, AT&T-1, the part where you put in
24 things particular to Bryan Kohberger.

25 You put in that affidavit a traffic

1 stop, I believe, from August in Moscow, Idaho; is that
2 right?

3 A. Yes, ma'am.

4 Q. That traffic stop, was that on your
5 radar before December 19th when you learned of Bryan
6 Kohberger's name?

7 A. No, ma'am.

8 Q. The next thing you relied on was a
9 traffic stop at WSU; is that right?

10 A. Yes, ma'am.

11 Q. Was that traffic stop on your radar
12 before you knew of Bryan Kohberger's name on
13 December 19th?

14 A. No, ma'am.

15 Q. You put in information about front
16 license plates being missing from Pennsylvania cars;
17 is that right?

18 A. Yes, ma'am.

19 Q. The 1112 video did not show enough of
20 the vehicle that you could see whether it had a front
21 license plate; is that right?

22 A. That sounds correct, yes.

23 Q. So it was after you learned of Bryan
24 Kohberger's name that that became part of your
25 affidavit; is that right?

1 A. Yes, ma'am.

2 Q. Let's talk about the vehicle
3 identification for a minute before I run back down
4 through the rest of that affidavit after Bryan was
5 identified.

6 When you worked with Special Agent
7 Immel to identify a vehicle, was there more than one
8 vehicle he identified?

9 A. I don't believe there was. If memory
10 serves, it was just the Hyundai Elantra.

11 Q. Would you agree that he was most
12 comfortable with the years 2011 to '13?

13 MS. JENNINGS: Object, Your Honor, for the same
14 reason; I don't understand the scope related to IGG.

15 MS. TAYLOR: Your Honor, I'm going to ask for a
16 little leeway on this one. I think it will be clear in
17 about two more questions. It is a sealed proceeding,
18 I'll be arguing it at Franks.

19 THE COURT: I don't want to pollute the record,
20 so approach.

21 (Bench conference.)

22 MS. TAYLOR: They looked for 2011 to '13, it
23 was their BOLO. It was after Bryan was identified by
24 IGG they expanded the search.

25 THE COURT: That relates to what?

1 MS. TAYLOR: It's going to relate to Franks,
2 but it has to do with IGG and when they identified him.
3 I have about two more questions along this line.

4 THE COURT: You have the separate Franks motion
5 regarding the scope of the car search --

6 MS. TAYLOR: Absolutely.

7 THE COURT: -- that we're not here for today.
8 We're here for the IGG. I get the idea that if the IGG
9 is suppressed -- the warrants based on IGG is
10 suppressed, that affects a lot of other things, right?
11 But I don't think you need to get into the evidence of
12 that at this point because it's part of the Franks --
13 there's a separate Franks motion on that.

14 MS. TAYLOR: There absolutely is.

15 The next question I'm going to get to
16 in the affidavit after the IGG was the police in
17 Pullman running the car, and he has laid it out in the
18 affidavit after the IGG without stating it, so I'm
19 doing the IGG part with him now. That car is a
20 different year than the one the BOLO is for. That's
21 as far as I'm going with the car at this hearing.

22 THE COURT: Counsel?

23 MS. JENNINGS: I don't understand what that has
24 to do with the IGG. It's part of a Franks hearing
25 related to vehicle identification. I understand her

1 timeline, but I think that point has already been made.

2 MS. TAYLOR: This was when I was allowed to
3 explore this witness since he's already here and we've
4 paid for him to come here --

5 THE COURT: Yeah, but I didn't open up
6 everything to Franks because we couldn't get into all
7 the other things that -- I understood we could get into
8 the entirety of Franks on IGG, which is why I allowed
9 it. And that's what we're going to stick to today.

10 MS. TAYLOR: IGG flows, it makes everything --

11 THE COURT: Well, I'm not suggesting we get
12 into other Franks issues that sprung, in part, from IGG
13 because those are separate based, right, and so I think
14 we need to just talk about the specific IGG stuff today
15 in terms of Franks. There's not a separate motion to
16 suppress based solely on that and not the IGG, if I'm
17 not mistaken, apart from Franks motions.

18 MS. TAYLOR: To suppress which -- I'm not
19 following. I'm sorry.

20 THE COURT: There are motions to suppress that
21 are not Franks related?

22 MS. TAYLOR: Right. I'm not going there.

23 THE COURT: That's evidence we can put on
24 today, but I thought we were going to do that later
25 today.

1 MS. TAYLOR: Absolutely.

2 THE COURT: There are various Franks motions,
3 one of which is to suppress -- one of the Franks motions
4 is that there was a Franks violation by not informing
5 the magistrate of the use of IGG and violations, as you
6 allege them, in obtaining the IGG. That's the issue we
7 are doing today in terms of evidence, and I want to
8 stick to that.

9 So getting into the car, which is
10 separate, which I understand your argument is the IGG
11 led them to expand the search of the cars, but that's
12 not the Franks issue itself. The Franks issue itself
13 on IGG is the IGG itself, and it's limited to that.

14 MS. TAYLOR: All right.

15 (Bench conference concluded.)

16 THE COURT: I'm going to sustain the objection.

17 BY MS. TAYLOR:

18 Q. All the things in the warrant that
19 became particular to Bryan Kohberger were not on your
20 radar before you learned his identity through IGG; is
21 that correct?

22 A. Yes, ma'am.

23 Q. And you elected not to put the IGG
24 identification in your probable cause affidavit; is
25 that right?

1 A. Yes, ma'am.

2 Q. What led to that decision?

3 A. That decision was a collaborative
4 decision. We made that decision in an effort to
5 independently verify the information that was provided
6 to us as a tip from the FBI, in much the same way we
7 would any other tip in law enforcement. So it was not
8 in any way meant to obfuscate any sort of information,
9 it was simply can we validate Mr. Kohberger's
10 involvement in this incident or can we not. That was
11 it.

12 Q. As a group effort you decided to
13 intentionally leave that out of your affidavit?

14 A. Yes, ma'am.

15 MS. TAYLOR: Given the limitation at this
16 point, I think that's all my questions.

17 THE COURT: All right.

18 Cross-examination.

19

20 CROSS-EXAMINATION

21 BY MS. JENNINGS:

22 Q. Good morning, Detective.

23 I only have one question for you.

24 Let's go back to December 19th, December 20th, and the
25 information that was provided to the team -- correct,

1 it was a team?

2 A. Yes, ma'am.

3 Q. And who all was part of this team that
4 was receiving this information telephonically from the
5 FBI?

6 A. So there were several of us: Yourself,
7 Mr. Thompson was there, Darren Gilbertson from the
8 Idaho State Police, Ed Jacobson from the FBI, I
9 believe there were a couple other folks from the FBI
10 and ISP in the room, I don't remember exactly who they
11 were, and then myself. There was numerous people that
12 were involved.

13 Q. Would it have been essentially the team
14 leaders for the investigation?

15 A. Yes.

16 Q. Was this any different than the other
17 information sharing that occurred during this case?

18 A. Not at all.

19 Q. There were routine team discussions?

20 A. Yes, ma'am. We had two official
21 briefings every day of the investigation, morning and
22 evening; so twice a day we would all link up. And
23 that was not just the command team, that was everyone
24 who was not actively on an interview would come back
25 to the police department, sit in the same room and

1 discuss the information that was learned from that
2 day. So it was very common throughout this
3 investigation for us to all be in the same room and
4 discussing the same information.

5 Q. So you were not the only investigator
6 receiving information from various sources?

7 A. Absolutely not.

8 Q. So when we talk about this Exhibit A,
9 that wasn't necessarily just your Exhibit A.

10 A. No, ma'am, it was not.

11 Q. It was all the information that the
12 investigators had up to that point?

13 A. Yes, ma'am, that is an accurate
14 statement.

15 Q. Now, related to the IGG and the
16 information you were provided by the FBI, in the
17 information provided, did you receive any medical
18 information about Bryan Kohberger?

19 A. No, ma'am, we did not.

20 Q. I don't have anything further. Thank
21 you.

22 THE COURT: Redirect?

23 MS. TAYLOR: Yes, Your Honor. Thank you.

24
25 REDIRECT EXAMINATION

1 BY MS. TAYLOR:

2 Q. Ms. Jennings was just talking to you
3 about the team, I guess, that got together a couple
4 times a day from November 13th until December 19th or
5 20th is our target time right now.

6 A. Yes, ma'am.

7 Q. Who from the FBI was part of those
8 daily meetings?

9 A. Like I said, SA Jacobson was there,
10 Maria Tyndall was there, I believe Special Agent Rob
11 Hille was involved. I'm trying to think of other
12 names. I don't remember any -- there were others
13 there, I just don't remember who they were. I
14 apologize.

15 Q. That's okay.

16 How about who else from Moscow Police
17 Department?

18 A. So Captain Blaker was there; I believe
19 usually Detective Vargas was there; sometimes Chief
20 Fry would sit in on those meetings -- most nights
21 Chief Fry would sit in on those meetings; Captain
22 Dahlinger, Anthony Dahlinger, was in those meetings
23 from MPD. I'm trying to think of all the others.
24 Basically the whole command team from MPD itself would
25 be in those meetings, and then whoever else was

1 available from the investigation section would also
2 come in.

3 Q. Who from ISP was there?

4 A. Darren Gilbertson was there, I believe
5 Detective Joe Lake was there most days. I can't
6 remember who else was consistently there. I remember
7 those two for sure. Lieutenant Mike Mooney was in
8 those meetings. That was the three off the top of my
9 head.

10 Q. When was the first time you talked
11 about the identification of Bryan Kohberger in those
12 meetings?

13 A. As far as when we knew of him?

14 Q. Yeah.

15 A. December 19th.

16 Q. How many hours of meetings do you think
17 you'd had up until the identification of Bryan
18 Kohberger?

19 A. Goodness, many. I don't know; it was a
20 lot.

21 Q. Twice a day every day?

22 A. Yes, ma'am.

23 Q. Seven days a week?

24 A. If not more than that, yeah.

25 MS. TAYLOR: Thank you. That's it.

1 THE COURT: Thank you, Detective. You can step
2 down.

3 Defense can call its next witness.

4 MS. TAYLOR: I'm sorry?

5 THE COURT: You can call your next witness.

6 MS. TAYLOR: Rylene Nowlin.

7 THE CLERK: Do you solemnly swear or affirm the
8 testimony you're about to give now before the Court is
9 the truth, the whole truth, and nothing but the truth?

10 MS. NOWLIN: I do.

11

12 RYLENE NOWLIN,
13 having been duly sworn, testified as follows:

14

15 DIRECT EXAMINATION

16 BY MS. TAYLOR:

17 Q. Good morning.

18 A. Good morning.

19 Q. Will you please state your name for the
20 record?

21 A. Rylene, R-Y-L-E-N-E, Nowlin,
22 N-O-W-L-I-N.

23 Q. I think you've done this before.

24 A. A few times.

25 Q. How are you employed?

1 A. I'm employed as a forensic laboratory
2 manager with the Idaho State Police Forensic Services
3 Laboratory in Meridian, Idaho.

4 Q. How long have you worked for Idaho
5 State Police Forensics Laboratory?

6 A. I have worked for Idaho State Police
7 Forensic Services since November 2002.

8 Q. Did you have prior experience similar?

9 A. Prior to my employment with ISP, I did
10 not.

11 Q. How were you trained for your job?

12 A. I have formal education. I was
13 originally hired as a forensic scientist in the
14 Biology DNA/Unit. As such, I was required to have a
15 degree in biology, biochemistry or similar. I was
16 required to have course work in genetics, molecular
17 biology, biochemistry and statistics. And then I
18 completed the Idaho State Police Forensic Services
19 specialized training program in biology screening, as
20 well as in DNA analysis, as well as in DNA database
21 analysis. And then I've completed hundreds of hours
22 of continuing education over my years.

23 Q. Are you a member of any professional
24 organizations?

25 A. Yes, ma'am.

1 Q. Which ones?

2 A. I am a member of the Northwest

3 Association of Forensic Scientists, the American

4 Association of Forensic Sciences, and the American

5 Society of Crime Laboratory Directors.

6 Q. Are you part of a collaborative?

7 A. Yes. I am a member of the National

8 Technology and Validation Implementation

9 Collaborative.

10 Q. What is that one about?

11 A. That is a group comprised of laboratory

12 management typically -- it depends on which portion or

13 section/subsection of the collaborative -- that have

14 gathered together to generate ideas for best practices

15 and guidelines for new technologies coming into

16 forensics.

17 Q. Would investigative genetic genealogy

18 be a new technology coming into forensics?

19 A. That is one of the technologies;

20 however, our group refers to it as FIGG, forensic

21 investigative genetic genealogy.

22 Q. FIGG, okay. I'll try to remember that.

23 That's the one I want to talk about

24 today. So your group is talking about best practices

25 for FIGG; is that right?

1 A. That's one of our areas of focus,
2 correct.

3 Q. Are you doing that because there are
4 practices that are important in that discipline?

5 A. We are doing that because it's a new
6 technology coming into the forensics world and not
7 every laboratory manager has a background in DNA. We
8 also have a group on firearms because not every
9 laboratory manager has a background on firearms. And
10 it's just a resource for those managers as they're
11 looking to implement new technologies.

12 Q. You mentioned best practices. Does
13 that have anything to do with things that I might
14 refer to as standards or procedures or protocols?

15 A. No.

16 Q. What does "best practices" mean?

17 A. Best practice is a recommendation based
18 on the current knowledge in the field. There are
19 organizations that come up with standards for
20 different fields, but this group, that is not their
21 purpose.

22 Q. In your lab, do you have standards and
23 procedures and protocols?

24 A. Our laboratory does have -- we call
25 them "analytical methods," as well as our "quality

1 system."

2 Q. Analytical methods and quality systems
3 means the same thing as procedures and protocols?

4 A. Yes.

5 Q. What does that mean to you?

6 A. What that means to me, our laboratory
7 is an accredited laboratory, so we have a set of
8 accreditation standards that we must meet. In order
9 to do that, we have set quality policies as well as
10 the analytical methods for each discipline. That
11 ensures that we are consistently performing our
12 scientific analyses in a way that has been validated
13 and shown to be proper for the testing that's being
14 conducted, and it also shows that we are meeting the
15 national standards by which we are accredited. In
16 addition, DNA has additional standards that they must
17 meet called the FBI's quality assurance standards for
18 forensic casework laboratories, as well as for
19 forensic databasing laboratories.

20 Q. I want to start with the first part of
21 it. You mentioned, I think, that there's standards
22 and protocols -- my definition of them -- that helps
23 assure your work so that somebody could look and see
24 what you did and maybe get the same result or
25 understand what you did.

1 Do I understand that right?

2 A. Yes. It's the methods we follow and,
3 yes, that would be one application someone could look
4 and see what we did.

5 Q. Now, you mentioned, at the very end of
6 what you told me before, DNA has something separate?

7 A. Correct.

8 Q. What do you mean?

9 A. Because our laboratory is a participant
10 in the National DNA Index System, it's commonly
11 referred to as CODIS, which stands for Combined DNA
12 Index System, we are subject to additional standards
13 set forth by the FBI because they manage that
14 database.

15 Q. What are those standards?

16 A. Those standards are known as the QAS
17 standards. They cover everything from -- when I
18 listed the classes I had at the beginning, they decide
19 what classes a DNA analyst coming in should have, what
20 education a DNA technical leader should have, what
21 things need to be included in a validation study, how
22 facilities need to be controlled. It covers the gamut
23 of testing.

24 Q. "Validation study," what does that
25 mean?

1 A. Whenever a new chemistry, a new
2 instrument, a new procedure is coming online in the
3 laboratory, we perform a study to ensure that that
4 chemistry, instrument or procedure is working or
5 receiving the expected results.

6 Q. Okay. And to be sure, you have to do
7 that because you use CODIS?

8 A. Our DNA section has to do that because
9 we use CODIS; the rest of the laboratory because of
10 part of our accreditation standards.

11 Q. Tell me what CODIS is, briefly.

12 A. CODIS, Combined DNA Index System, is
13 essentially a national DNA database. It exists on
14 three levels: There's a local level, your county
15 sheriff's office, local PDs; there's a state level,
16 which is typically the state laboratory, it is limited
17 to public laboratories; and then the national level.

18 In Idaho, the Idaho State Police
19 Forensic Services Lab in Meridian is the only DNA lab
20 in the state, so there are no local labs in the state
21 of Idaho. And the database contains different
22 indices: There's a forensic index; those are profiles
23 obtained from items of evidence. There's an offender
24 index; those are samples from those convicted of
25 qualifying offenses in your state as determined by

1 your state legislature. If your state legislature
2 allows arrestees, there's an arrestee index. There's
3 also a missing persons index and for remains.

4 Q. Do you have any special role with the
5 CODIS database?

6 A. Currently, I'm a CODIS user, that is my
7 only role at the moment.

8 Q. What was your role in the fall,
9 November, of 2022?

10 A. CODIS user.

11 Q. Do you have any administrative
12 responsibilities with CODIS?

13 A. Not currently.

14 Q. Have you in the past?

15 A. In the past I have served as the
16 alternate state administrator for Idaho.

17 Q. For CODIS, DNA that goes into CODIS,
18 what kind of profile is used?

19 A. If I'm understanding the question
20 correctly, there's different types of DNA profiles,
21 and what goes into CODIS is known as an STR profile or
22 short tandem repeat.

23 Q. What kind of information is in a short
24 tandem repeat or STR?

25 A. Can I give a brief explanation about

1 DNA?

2 Q. Sure.

3 A. So DNA is a substance that's found in
4 the cells of our body. It acts as a blueprint; it
5 tells our bodies what form to take and how to
6 function. Between individuals it is over 99 percent
7 the same, that is why we all have the same basic
8 structure and our bodies function in basically the
9 same way.

10 In forensics and in STRs we are
11 targeting that less than one percent that is unique to
12 an individual, with the exception of identical twins;
13 and so areas of DNA that vary widely between
14 individuals don't code for anything typically, so it
15 doesn't tell us anything about a person. When I look
16 at an STR profile, I can tell you if that person is
17 genetically male or genetically female and that is
18 all.

19 Q. Do you know what a SNP profile is?

20 A. I do.

21 Q. What is that?

22 A. A SNP profile is a single nucleotide
23 polymorphism, so you're looking at a single
24 nucleotide, whereas the STR is a series of repeating
25 nucleotides, a specific repeat that we're looking for.

1 Q. The SNP, then, is that a closer look at
2 a person's genome?

3 A. I would like to state that I'm not an
4 expert in SNPs, I'm not qualified in the SNP
5 technology and have not ever been qualified in the SNP
6 technology. With STRs, depending on the chemistry,
7 you're looking at anywhere from 13 to 25-plus
8 locations. With SNPs, my understanding is in general
9 you're looking at a minimum of 10,000.

10 Q. Does that mean there's more information
11 about a human contained in a SNP than there is an STR
12 profile?

13 MR. NYE: Your Honor, I'm going to object at
14 this point. This witness is not disclosed as an expert,
15 and she just testified she's not an expert in SNP
16 technology.

17 THE COURT: I appreciate that with respect to
18 her answer, and I will take that into account in the
19 event the Defense intends to rely on that testimony. I
20 took it as a sort of background about her general
21 knowledge. I'll allow it for now. I'm not taking it as
22 expert testimony about that SNP, beyond the basic
23 understanding of what SNP is.

24 MS. TAYLOR: Thank you.

25 Q. Do you remember my question?

1 A. Yes. I would assume if you're looking
2 at a larger part of the human genome, that you would
3 be getting a larger amount of information about
4 someone.

5 Q. I have one more question about CODIS,
6 and then I want to move in a different area.

7 You mentioned that there's four indexes
8 and you talked about a forensic index.

9 A. Correct.

10 Q. What is that one used for?

11 A. The forensic index is where profiles
12 generated from items of evidence can be uploaded.
13 There are rules about what can be uploaded, though.
14 It cannot match someone known to be the victim of a
15 crime; it cannot match someone whose DNA should be in
16 a place outside of a crime being committed; it cannot
17 be anything taken directly from a suspect of a crime
18 where you would reasonably assume their DNA would be
19 present; it must be related to a crime, and it must be
20 believed to be from the putative perpetrator of that
21 crime.

22 Q. So if I understand it, you use DNA, get
23 an STR, and only under certain circumstances can you
24 use CODIS. Do I understand that right?

25 A. Correct.

1 Q. Okay. Outside of CODIS -- and I
2 understand what that does -- if you create a profile,
3 a DNA profile of somebody, is that a separate thing
4 you do in your lab, even if you're not going to run
5 them through CODIS?

6 A. Yes. When we receive items of evidence
7 or samples from known individuals, we generate a DNA
8 profile from those.

9 Q. Did you become involved in the homicide
10 in Moscow from 2022?

11 A. Involved as the manager of the
12 laboratory in Meridian. I haven't actually done any
13 work on any evidence in the case or issued any
14 reports.

15 Q. All right. Is it fair to say you did
16 not go to that residence then?

17 A. Correct.

18 Q. As the lab manager, do you understand
19 about what evidence has come into the lab from that
20 case?

21 A. There was a lot of evidence submitted.
22 I have a general knowledge of items that have come in,
23 but I could not provide you a detailed list off the
24 top of my head.

25 Q. That's okay. I won't ask you to.

1 A. Thank you.

2 Q. As a lab manager, are you aware of
3 different bits of testing that were done related to
4 this case?

5 A. In general, yes.

6 Q. Are you aware of a profile called
7 Unknown Male A?

8 A. Yes.

9 Q. Where did that come from?

10 A. To my recollection, Unknown Male A came
11 from a swab taken from a knife sheath that was
12 submitted by Moscow Police Department.

13 Q. Are you aware of Unknown Male B?

14 A. I believe that was another sample --
15 from hearing the previous testimony -- that was from
16 in the house.

17 Q. I would only want you to testify from
18 your own base of knowledge.

19 A. From my own memory, I don't recall
20 exactly where B was from.

21 Q. Fair enough. Thank you for clarifying
22 that for me.

23 Are you aware that investigative
24 genetic genealogy or forensic investigative genetic
25 genealogy was used in this case?

1 A. Yes.

2 Q. What was your role in that?

3 A. My role, specific to this case, was
4 facilitating the signing of a memorandum of
5 understanding, making sure all parties received it and
6 had signed it, those parties being the police agency,
7 the prosecuting attorney's office, as well as a member
8 of ISP's management team. And then when the
9 preliminary report was received, my job was to look
10 over it, ensure that it had all the required pieces in
11 the report, and then to authorize payment of the
12 invoice for that testing.

13 Q. What role did you have with the
14 laboratory that was going to perform the FIGG work?

15 A. As far as how we came to be in contract
16 with them? So when ISP decided to pursue a contract
17 with a laboratory that could perform the SNP testing
18 that we talked about earlier, we're a state agency, so
19 we don't just get to call up anybody and hire them, so
20 we had to go through a bid process. So part of my
21 role was developing the scope of work for that
22 invitation to bid, as in what we expected the vendor
23 to perform; and then when the bids came in, I was
24 involved in the team that evaluated the documents that
25 were submitted, and then ultimately the Division of

1 Purchasing determined who won the bid.

2 Q. Did Idaho State Police forensics have a
3 contract with this laboratory, Othram?

4 A. They were the winning bid through that
5 process, and so they were under contract with the
6 Department of Purchasing, correct.

7 Q. Is the contract with the Department of
8 Purchasing that you perform these services and we pay
9 you for them, essentially, or does it have more meat
10 to it to talk about some of the things that you were
11 talking about; how you helped develop, I guess, the
12 job description and what would be required?

13 A. I am really not familiar with
14 Department of Purchasing's day-to-day operations or
15 how they operate. My role was strictly developing
16 that scope of work. We expect them to develop the
17 profiles that can be uploaded to the public genealogy
18 databases. We expect them to provide us a written
19 report. We expect the report to contain certain
20 things; to have a header, to have a date, to list the
21 case number, have page numbers, those kinds of things.

22 Q. Outside that description of the scope
23 of work and the requirements, did your lab have a
24 separate contract with Othram that basically said you
25 agree to do these things?

1 A. We had that they won the bid from
2 Division of Purchasing and that's the state contract
3 for performing that work.

4 Q. You mentioned a memorandum of
5 understanding you helped facilitate to be signed by
6 the parties. Was Othram one of the parties that
7 signed that?

8 A. No. This is a memorandum between the
9 law enforcement agencies, the prosecuting attorney's
10 office and the laboratory.

11 Q. And in that memorandum of
12 understanding, that indicated that the Interim
13 Department of Justice -- the Department of Justice
14 Interim Policy applied; is that right?

15 A. I believe it did. I don't have the
16 exact text memorized.

17 Q. If I showed you a copy of that
18 memorandum of understanding, would that help you
19 remember if that was part of it?

20 A. Yes.

21 Q. Your Honor, if I have just a moment to
22 gather that. It's not being offered as an exhibit --

23 THE COURT: Just refreshing.

24 MS. TAYLOR: -- it's to aid in her memory.

25 THE COURT: Show it to State's counsel.

1 BY MS. TAYLOR:

2 Q. Does looking at that refresh your
3 memory as to whether the Department of Justice Interim
4 Policy applied?

5 A. It does say in the first paragraph that
6 it did apply.

7 MS. TAYLOR: And, Your Honor, I'm going to
8 refer to Defense Exhibit D19 here and ask the witness be
9 shown that, and then I'll provide the Court my copy.

10 THE COURT: When was this filed?

11 MS. TAYLOR: That would have been filed with
12 the amended Franks memorandum. On the bottom of that
13 page, I'm sorry --

14 THE COURT: I've got thousands of filings. I
15 have to go by date to find things.

16 MS. TAYLOR: I think it was November 18th or
17 20th. At the bottom of that page, however, you can see
18 some numbers in red and those were numbered to make it
19 easier to find.

20 THE COURT: I just need to find it in the
21 computer first. All right. I found it in my printed
22 documents.

23 BY MS. TAYLOR:

24 Q. Is that the Department of Justice
25 Interim Policy?

1 A. Yes, the Department of Justice Interim
2 Policy on Forensic Genetic Genealogical DNA Analysis
3 and Searching.

4 Q. And in section seven -- I believe it's
5 section seven or page seven.

6 A. "Investigative Caution," that section?

7 Q. Let me ask you the question: Are you
8 familiar with the provision in that policy that says
9 if there's a prosecution case, if somebody is arrested
10 and there's a prosecution case, all items in the
11 forensic investigative genetic genealogy should be
12 preserved for court purposes?

13 A. I believe that is part of -- I don't
14 think it's in section seven, it might be, but I
15 believe that is part of preserving.

16 Q. Okay. What I want to know is what did
17 Othram preserve?

18 A. I don't know.

19 Q. What did you get back?

20 A. We received a preliminary report. In
21 other cases, we will sometimes get back the DNA
22 extract that was sent to them. I don't recall if we
23 got that back in this case. Anything our laboratory
24 receives, we return to the submitting agency.

25 Q. Would validation be part of that,

1 validation studies?

2 A. I wouldn't assume so. I wouldn't
3 assume that would be part of this, no.

4 Q. Would bench notes be important --

5 THE COURT: I'm sorry, I didn't hear that.
6 What notes?

7 MS. TAYLOR: Bench notes, lab bench notes.

8 THE COURT: Thank you.

9 THE WITNESS: For our laboratory, we designate
10 those as part of our case record. I'm not familiar with
11 what Othram designates as part of their case record.

12 BY MS. TAYLOR:

13 Q. So I guess then that means you don't
14 have any of those?

15 A. No, only the preliminary report.

16 Q. All right. I will move to a different
17 area of questioning, and it's about the requirements
18 with Othram. You mentioned the goal was to create
19 profiles and create a report but to search public
20 databases.

21 A. Correct. There are public genealogy
22 databases that will allow entry of law enforcement
23 samples, and that is part of the scope of work, they
24 were required to enter it into those databases.

25 Q. And are you aware there are databases

1 that do not allow law enforcement to search?

2 A. Yes.

3 Q. Were you part of work after Othram
4 began their work to try and do an investigation?

5 A. I was not -- as far as -- I guess I'm
6 unclear. We received evidence submitted to the
7 laboratory before, during, and after for all sections.
8 Is that what you're referring to?

9 Q. Let me rephrase my question. I think
10 that question was too broad.

11 While Othram was doing their work, were
12 you part of any work to help Othram; for instance, did
13 you get any documents that you did some research on to
14 try to help Othram?

15 A. No.

16 Q. Were you aware that Othram was just
17 stopped from doing any further work at some point?

18 A. I was aware of that.

19 Q. And was this before they produced any
20 result?

21 A. No. We received a preliminary report.
22 I recall receiving that because that's how I know I
23 can approve payment of the invoice, so I know we
24 received that prior to them being told they were
25 stopped.

1 Q. Were you part of the decision to stop
2 them?

3 A. I was not.

4 Q. How did you find out about it?

5 A. I found out about it in an email from
6 my laboratory system director.

7 Q. Do you remember when that happened?

8 A. I don't recall.

9 Q. Does the forensics lab continue to
10 contract with Othram?

11 A. Yes.

12 Q. If Othram had a file that would have
13 had validation studies and bench notes, anything they
14 did on the case, who would have received that?

15 A. Again, validation studies would be odd
16 to associate with individual cases, so I wouldn't
17 assume they would do that. Again, I'm not familiar
18 with their procedures. And as far as who would
19 receive documents, usually it would be, I would
20 assume, the agency which we received that preliminary
21 report.

22 Q. You mentioned you're not familiar with
23 their procedures?

24 A. Not in detail, no.

25 Q. What procedures are you familiar with?

1 A. For Othram?

2 Q. Yes.

3 A. As part of the bid process, all of the
4 bidders were required to submit -- I believe they were
5 required to submit their procedures, and it was
6 essentially just looking over them to say, yes, they
7 have a procedure in place for extracting DNA, yes,
8 they have a procedure in place for doing SNPs so, yes,
9 they meet the minimums for the invitation to bid.
10 But, again, I'm not qualified in that technology, so I
11 wouldn't have studied them or rendered an opinion on
12 them.

13 Q. I won't ask you for your opinion on
14 them; I won't ask you to quote them to me. But you
15 saw those?

16 A. Yes, at the very beginning of the bid
17 process.

18 Q. Let's switch gears.

19 In the case we are here for today, do
20 you recall there being a trash pull?

21 THE COURT REPORTER: I'm sorry, there being a
22 what?

23 MS. TAYLOR: A trash pull.

24 THE WITNESS: I recall receiving evidence from
25 a trash pull, correct.

1 BY MS. TAYLOR:

2 Q. What role did you have in deciding
3 anything about that trash pull?

4 A. Nothing about the trash pull occurring.
5 I do recall there being a brief, I can't remember if
6 it was a phone meeting or a video meeting, and just
7 being asked in general what items from someone's trash
8 are good for DNA.

9 Q. Did you give advice?

10 A. I don't know if it was me specifically
11 or another member of our DNA unit, but we did offer
12 suggestions on items that are good for DNA.

13 Q. Did you receive items to test?

14 A. Yes.

15 Q. What instructions were you given about
16 those items?

17 A. The discussion was a person of interest
18 had been developed and to analyze the items from the
19 trash to determine if they could be inclusive of the
20 DNA profile that was developed from the knife sheath,
21 Unknown Male A.

22 Q. What date was that you received the
23 trash?

24 A. The trash was received into the
25 laboratory on December 28th of 2022.

1 Q. So you were looking for a male profile?

2 A. Correct.

3 Q. All right. Did you find male profiles?

4 A. I didn't perform the actual testing,
5 but, yes, there were male profiles developed.

6 Q. How many?

7 A. I don't know.

8 Q. Do you know anything about either male
9 profile or any of them?

10 A. I believe one of the male profiles
11 designated as E was determined they could be a
12 biological parent or child of the profile from the
13 knife sheath.

14 Q. And are you aware that Bryan
15 Kohberger's DNA was in the trash?

16 A. I was not aware.

17 Q. Did you become aware?

18 A. I became aware later. We didn't have
19 his name at that time.

20 Q. You didn't know his name on
21 December 28th?

22 A. No, I did not.

23 Q. Okay. Were you -- on December 28th,
24 were you aware that not Male E but another male
25 profile had been identified?

1 A. From --

2 Q. The trash.

3 A. -- the trash pull?

4 I knew there were some mixtures of DNA

5 that were also included.

6 Q. One of the mixtures, did it have a male

7 DNA profile?

8 A. I believe it did.

9 Q. And wasn't that profile -- the major

10 component of that profile with a minor female?

11 A. I believe that sounds correct.

12 Q. And later didn't that return to Bryan

13 Kohberger?

14 A. We actually did not perform that

15 comparison.

16 Q. Did you and I have a discussion a few

17 days ago?

18 A. We did.

19 Q. Did you tell me that you knew that to

20 be Bryan Kohberger's DNA?

21 A. I said I thought that was, and I could

22 not find the report where we had done that comparison.

23 I've since looked through, and we did not make that

24 comparison, so I cannot say that he was included in

25 that mixture. Our laboratory did not do that

1 comparison.

2 Q. But a DNA profile was made for that
3 mixture; is that right?

4 A. Yes.

5 Q. And there's a minor female and a major
6 male.

7 A. That is my understanding.

8 Q. And you could, by eye, look at that and
9 tell that's Bryan Kohberger, couldn't you, if you
10 wanted to?

11 A. If I wanted to, I could probably look.
12 I did not.

13 Q. Okay. You could still do it today if
14 you wanted to.

15 A. If there was a request to do the
16 comparison -- again, we don't do a visual comparison
17 evidence to evidence. Our procedures don't allow us
18 to do that for probative comparisons.

19 Q. I need you to help me understand that a
20 little bit. I'm having that question because I
21 understand there was an Unknown Male B found on Lab
22 Item 30. Do you know what I'm talking about?

23 A. No.

24 Q. Okay. Well, I also understand that
25 there was a cigarette butt taken from somebody in

1 connection with the case investigation. Are you
2 familiar with that?

3 A. I am familiar with that.

4 Q. And that was compared to the DNA on the
5 knife sheath; is that right?

6 A. Yes.

7 Q. And that was found to be excludable; am
8 I using that word right?

9 A. It was an exclusion, correct.

10 Q. So you compared something that was
11 taken from somebody to an item of evidence; is that
12 right?

13 A. Something that was a secondary
14 reference, as in someone identified it as they saw
15 that person using that item, they saw that person
16 dispose of that item. That item was collected and
17 used as a reference sample from that person because
18 there was someone who said that is from that person.

19 Q. Okay. When you got the trash to go
20 through in the lab, you knew that you were looking for
21 a male, right?

22 A. Correct.

23 Q. And you knew that the male and his
24 family members lived in a house that produced that bag
25 of trash; is that right?

1 A. Yes, but not who produced each
2 individual item in that trash pull.

3 Q. Okay.

4 A. It wasn't labeled, "This water bottle
5 is from person of interest; this tissue is from a
6 sibling; this Q-tip is from a parent." We didn't have
7 that information. It was just, "Here's some items
8 from a trash pull."

9 Q. And one of those items you took and
10 developed Male E?

11 A. I did not, but yes, the laboratory did.

12 Q. In general the lab developed Male E.

13 A. Correct.

14 Q. And compared Male A and Male E?

15 A. There was a paternity statistic
16 calculated because they were both single source
17 profiles, meaning only from one individual.

18 Q. Okay. And there's another male
19 profile.

20 A. That was part of a mixture, to my
21 knowledge, meaning more than one person's DNA present
22 on that item.

23 Q. Again, only one male, though; is that
24 right?

25 A. So when there's a mixture on an item of

1 evidence -- I don't know if you want me to explain the
2 process -- the first step is determining number of
3 contributors to that mixture, then our laboratory
4 utilizes a software program to help break out the
5 components of that mixture. When one individual is
6 male, it's not always possible to say the gender of
7 the second person. Males have an X and a Y
8 chromosome, females only have an X. So if there's an
9 X and a Y present, it could be one male, it could be
10 two males, it could be male and a female. Without
11 comparing to known reference samples, I can't say
12 that. And I haven't seen the profile, to my
13 knowledge.

14 Q. Okay. Did you tell me, though, on that
15 sample, and I'm talking about 95.9.1, that was a male
16 and a female?

17 A. I believe that -- I don't know if it
18 was designated as that in the laboratory report. To
19 my knowledge it was -- I can't remember what the
20 report said. Again, I didn't generate the report and
21 didn't do the work, so I'm not as familiar with it as
22 if it was my own work.

23 Q. Okay. Male B was also a mixture,
24 wasn't it?

25 A. I don't know.

1 Q. Okay.

2 A. If it was designated as Unknown Male B,
3 again, I don't know if it was from a mixed sample or
4 not.

5 MS. TAYLOR: Your Honor, if I may have just a
6 moment. Thank you for that.

7 Q. Just a couple other questions for you.
8 As it relates to Male E, it was compared to the
9 sheath; is that right?

10 A. Correct, a paternity comparison.

11 Q. Male E profile was compared to a lot of
12 other evidence items in the case, wasn't it?

13 A. Correct.

14 Q. And you are allowed to do a manual
15 interpretation per your policy, right?

16 A. If there is -- so it's not black and
17 white. So if it is a single source and we can look at
18 it and say that that person is excluded, they are not
19 the source of the DNA, then yes, that can be done
20 manual; and by manual, I mean a person looking at it.

21 If it is a probative comparison -- and
22 how we define a probative comparison is if it's saying
23 something about who could be the source of the DNA on
24 an item of evidence that's relevant to the case, then
25 no, we do not do a manual comparison and issue a

1 statement about that because all of our standards, we
2 have to issue a statistic so that the trier of fact
3 has something to gauge how unique that could be, what
4 is the likelihood that that DNA could be from someone
5 else. We provide that statistic; we don't just say it
6 matches. That requires a statistical calculation
7 which we use a probabilistic genotyping software to
8 do.

9 Q. I apologize. I think I got lost in
10 there. Are you telling me because it was a mix, you
11 couldn't have done a manual interpretation on 95.9.1?

12 A. Because it's a mixed profile and
13 because if it was -- you're saying it was Bryan's DNA,
14 Bryan Kohberger's DNA present, that would be a
15 probative comparison in the case, which we have to
16 provide a statistic in order to make that statement.
17 In order to deconvolute a mixture, we are no longer
18 allowed to do those manually, deconvolute, as in
19 separate the mixture into its components; we have a
20 software. That software was not designed for, nor was
21 it validated for, doing evidence-to-evidence
22 comparisons.

23 Q. Now you're speaking my language.

24 Validations are important for
25 integrity; is that right?

1 A. In forensics, our laboratory uses
2 validations to ensure any new tool is working
3 properly.

4 Q. Now, at some point later, your lab
5 issued a report saying -- matching the DNA on the
6 sheath with DNA taken from Bryan Kohberger; is that
7 right?

8 A. That's correct and a statistic was
9 provided.

10 Q. Now, I want to talk about what we're
11 talking about when we say the "sheath." You're
12 familiar with what happened with the sheath for
13 swabbing; is that right?

14 A. I've seen the sheath and I know how our
15 laboratory performs swabbing of evidence, but I did
16 not swab that item of evidence nor did I see it being
17 swabbed.

18 Q. As I understand it, though, you've read
19 the lab notes.

20 A. At one point I believe I did read the
21 notes. I think I was asked a question, and the
22 analyst was out of town or something.

23 Q. And I think you answered that question
24 to law enforcement after consulting somebody else who
25 was with the swabber when the sheath was swabbed; is

1 that right?

2 A. It's sounding familiar.

3 Q. If I understand the lab reports, it's a
4 single source on the knife sheath; is that right?

5 A. Correct.

6 Q. Does that mean it's only one person in
7 that area?

8 A. Yes, that was detected through our
9 testing.

10 Q. Tell me where you think that sheath was
11 swabbed for purposes of DNA collection.

12 A. I believe the analyst swabbed the --
13 there's kind of a snap or a button that was the top of
14 the snap, and that's the area that was swabbed. There
15 were other areas on it sampled, as well.

16 Q. For the purposes of Unknown Male A that
17 you're telling us later came back to Bryan Kohberger,
18 that's the only place I want to talk about right now.

19 Are we on the top of the button, the
20 outside, or on the inside, the socket portion of the
21 button?

22 A. I know on the top. I don't recall if
23 she swabbed the underside or not. I'd have to look at
24 her notes again.

25 Q. Do you know if that sheath -- was part

1 of that preserved for fingerprinting?

2 A. The swabbing was done first, that's our
3 laboratory standard order of processing. If DNA is
4 needed and fingerprints, they will work together.
5 Essentially latents -- excuse me, fingerprints will
6 say we can see some possible ridge detail, so if you
7 can avoid this area, after DNA says we want to swab
8 this, and they come to a decision of what would best
9 suit that item of evidence to determine where to swab.
10 So the swabbing takes place first.

11 Q. I think I don't have any other
12 questions right now. Thank you.

13 THE COURT: How long do you think you have?
14 I'm just trying to gauge a break here.

15 MR. NYE: I'd say ten minutes.

16 THE COURT: Let's take ten minutes, and we'll
17 be back.

18 (Recess.)

19 THE COURT: Mr. Nye, you may inquire.

20
21 CROSS-EXAMINATION

22 BY MR. NYE:

23 Q. Good morning. I just have a few
24 questions for you today.

25 So you talked a little bit about

1 policies and procedures in the lab. Do you recall
2 that testimony?

3 A. Yes.

4 Q. And you talked about that there are
5 policies and procedures related specifically to DNA;
6 is that correct?

7 A. Correct.

8 Q. As part of those policies and
9 procedures, does the lab need to have a legitimate
10 reason to test DNA?

11 A. Yes. We only test DNA related to
12 criminal investigations or to death investigations,
13 and it needs to be an item that will answer a
14 probative question in a case.

15 Q. So, for example, if someone at the lab
16 wanted to test DNA out of curiosity about medical
17 information, that would not be consistent with that
18 policy?

19 A. We don't do curiosity testing and none
20 of our testing would provide medical information.

21 Q. You also testified that you were
22 involved in or maybe primarily responsible for
23 developing the scope-of-work request for Othram; is
24 that correct?

25 A. I was part of that, yes.

1 Q. And what is a scope-of-work request?

2 A. That just goes with -- and this was my
3 first one I've done, so I don't have vast experience
4 in this process -- but when we're going to contract
5 with a vendor, just going through and outlining what
6 we expect them to do as part of that.

7 Q. And what do you recall about this
8 request specifically? What were you requesting Othram
9 to do?

10 A. Specifically, we were requesting them,
11 if necessary, to perform DNA extraction, pulling the
12 DNA out of the cells on an item of evidence, if
13 necessary; our laboratory typically did that. We were
14 requesting them to generate a SNP profile using either
15 SNP array or whole genome sequencing. We were
16 requesting them to then upload that to all public
17 databases that allow law enforcement samples. We were
18 requesting them to generate a report. We were
19 requesting them to notify us -- or to complete the lab
20 portion of the work, generation of the profile, within
21 60 days, I believe. I believe there was also
22 information in there about not publicly giving our
23 case information to the public without our express
24 permission, things of that nature.

25 Q. Was there anything in the scope of work

1 request related to medical information?

2 A. No.

3 Q. So you weren't asking Othram to
4 determine if this DNA, the person whose DNA this was
5 had, for example, cancer?

6 A. No.

7 Q. Now, in your position and in this case,
8 you testified you didn't actually do any of the
9 testing, but you've read a lot of the reports that
10 were involved; is that correct?

11 A. I've seen a lot of the reports,
12 correct.

13 Q. And of all the reports you've read,
14 have you seen that kind of information?

15 A. No, the testing our laboratory does
16 doesn't generate any medical information.

17 Q. And you also talked about, in the scope
18 of work, Othram was required to provide you with at
19 least one report.

20 A. At least one report, correct.

21 Q. And did you have a chance to review
22 that?

23 A. I have seen that report, yes.

24 Q. Did it contain medical information?

25 A. No, it did not.

1 Q. Now, you also talked a little bit with
2 Ms. Taylor about an MOU. Do you remember that
3 discussion?

4 A. Yes.

5 Q. I just want to be clear, who were the
6 parties to that MOU?

7 A. The parties to that MOU specific to this
8 case were the Moscow Police Department, the Latah
9 County Prosecuting Attorney's Office and Idaho State
10 Police Forensic Services.

11 Q. So Othram was not a party to that MOU?

12 A. Correct.

13 Q. And the FBI was not a party to that
14 MOU?

15 A. Correct.

16 Q. In another part of your testimony you
17 spoke with Ms. Taylor about the trash pull. Do you
18 recall that testimony?

19 A. Yes.

20 Q. And that one of the samples that was
21 pulled from the trash that was a mixed sample, your
22 lab did not compare that; is that correct?

23 A. Correct.

24 Q. And can you explain why you did not
25 compare that?

1 A. So initially we did not compare that
2 because it was a mixed profile. We did not know the
3 source of that profile, so it could not be considered
4 a secondary reference, so we deemed that to be an
5 evidentiary sample. And we can't make a manual
6 comparison of evidence to evidence, especially when
7 there's a mixture. And if the analyst -- again, I was
8 not the analyst -- if the analyst did the comparison
9 and determined that Unknown Male A could have been in
10 that mixture, it would have been inappropriate to
11 compare those two samples together per our analytical
12 methods.

13 Q. And so the decision not to compare
14 that, who made that decision?

15 A. That would have been the analyst that
16 worked that case.

17 Q. So you weren't -- to your knowledge, no
18 one at the lab was advised, for example, by the lead
19 investigator on this case which of those items to
20 test?

21 A. No.

22 Q. You also gave some testimony about the
23 knife sheath and the swabs on the knife sheath. Do
24 you recall that?

25 A. Yes.

1 Q. And I know you don't recall exactly
2 where the knife sheath was swabbed, but we've been
3 talking about policies. Do your policies or best
4 practices suggest where a knife sheath or an item like
5 that should be swabbed for DNA?

6 A. No. It would be impossible for our
7 analytical methods to cover how to swab or where to
8 swab every single item of evidence; we receive quite a
9 wide variety of items into the laboratory. So it's
10 the analyst's job as a scientist, as a practitioner in
11 forensic biology screening and DNA analysis, to know
12 what they're targeting.

13 So on this item I believe there was
14 also blood, so they would have been targeting that
15 separate and then also trying to determine who may
16 have handled that, so they would have specifically
17 honed in on an area that whoever handled it would have
18 had to have touched and maybe touched repeatedly.

19 Q. And why do they hone in on those areas
20 in particular?

21 A. Because that's the question we are
22 trying to answer. In forensic DNA analysis, the
23 questions we're trying to answer is can we link
24 assailant to victim, victim to assailant, or one or
25 both to the scene; so in this instance my

1 understanding the sheath was found at the scene, so
2 trying to link the possible perpetrator to the scene.

3 Q. And why in particular do you hone in on
4 the areas where this person may have handled the knife
5 sheath?

6 A. Because looking for -- so DNA is found
7 in the cells in our body, and that includes the skin
8 cells that are sloughed off on our hands when items
9 are handled; so looking for any touch DNA, is the term
10 that is most often used, or from someone touching or
11 handling an item.

12 Q. So if I'm understanding correctly, the
13 analyst is swabbing the places that would most likely
14 have that touch DNA?

15 A. Correct.

16 MR. NYE: No further questions.

17 THE COURT: Redirect?

18 MS. TAYLOR: Thank you.

19 Your Honor, I would like to start by
20 sharing a computer screen that I have approved with
21 the prosecutor for refreshing her memory.

22 THE COURT: It's just for refreshing, it's not
23 an exhibit?

24 MS. TAYLOR: Yeah, it is. May I approach?

25 THE COURT: Go ahead.

1 Have we established she doesn't
2 remember or are we just going to stipulate to it?

3 MS. TAYLOR: Your Honor, I can ask the
4 question --

5 THE COURT: We can save time if you're going to
6 stipulate to it.

7 MR. NYE: Yeah, that's totally fine, Your
8 Honor.

9 THE COURT: Let's do that.

10 Are you going to share the screen with
11 the Court or just her?

12 MS. TAYLOR: It's just to refresh her memory,
13 Your Honor.

14 THE COURT: Gotcha.

15

16 REDIRECT EXAMINATION

17 BY MS. TAYLOR:

18 Q. We were talking at the end of my
19 questions, and where Mr. Nye just left off with you,
20 about where the sheath would have been swabbed.

21 Reading the email that's been placed in
22 front of you, does that refresh your recollection
23 about what you believed to be the place the sheath was
24 swabbed?

25 A. Very much so.

1 Q. Where was it swabbed?

2 A. The knife was swabbed the entire -- can
3 I --

4 THE COURT: Did you say the knife was swabbed?

5 THE WITNESS: Sorry, the knife sheath. Am I
6 allowed to read it?

7 BY MS. TAYLOR:

8 Q. You're supposed to read it and let it
9 refresh your recollection, and then not read it but
10 just tell me a summary of where it was.

11 A. The entire leather portion of the
12 strap, both top and bottom, and then the underside of
13 the button. I misspoke, she did not swab the top of
14 the button because that was determined to be the most
15 likely place for fingerprints to be found.

16 Q. The underside of the button, was it the
17 part that the sticky-out part would go into, or the
18 sticky-out part, or both?

19 A. I can't tell from this. I would have
20 to look at her notes.

21 Q. Okay. Good enough. Thank you.

22 A couple of follow-up questions for
23 you. You answered a lot of questions for Mr. Nye
24 about medical information and that your lab does not
25 do testing for medical information. Is that because

1 you do STR or Y-STR testing, not SNP testing?

2 A. Correct. Our laboratory performs both
3 STR and Y-STRs, and those don't yield medical
4 information.

5 Q. The MOU that you reviewed and
6 remembered the Department of Justice Interim Policy
7 applied to the circumstance in this case, do you know
8 who else the Interim Policy applies to?

9 A. Based on what is stated in the Interim
10 Policy, it applies to public laboratories like ours
11 that receive federal funding and cases where federal
12 funding is being used.

13 Q. In Mr. Kohberger's case there was
14 federal funding being used.

15 A. To my knowledge, I don't know if we did
16 use federal funding in this case.

17 Q. Do you recall talking to me a couple
18 days ago?

19 A. Yes.

20 Q. And do you recall telling me that you
21 did?

22 A. I do recall telling you that we had a
23 grant in place, but, again, I authorized payment of
24 the invoice but which fund the funds come out of, I
25 don't know. And I apologize if I misspoke.

1 Q. And are you aware that the FBI FIGG
2 unit, I guess, took over and the FBI finished the
3 genetic genealogy after Othram was stopped?

4 A. I'm aware we were authorized to turn it
5 over, but as to what happened after that, I don't
6 know.

7 Q. Okay. One more question for you. You
8 talked to Mr. Nye a bit about not comparing the
9 sample, 95.9.1, to the sheath DNA, and I had asked you
10 a little bit about your policy that allowed you to do
11 the hand search, the manual search on that. Your
12 policy does allow you to do a comparison, like it's
13 either excluded or not excluded, though, is that
14 right? And I'm looking at policy 4.5.6.

15 A. No. We can report an exclusion, they
16 aren't from the same source. But in order to say they
17 are from the same source, considering they're from
18 completely different areas, no, we would have to
19 provide a statistic, and we can't do that.

20 Q. But you could have looked at it and
21 said it's not excluded.

22 A. That would be an indication that it's
23 possible, and we would have to provide a statistic for
24 that. And we have -- so our biology section, you may
25 be looking at our analytical methods, biology section

1 has their own quality manual that further discusses
2 this.

3 MS. TAYLOR: Your Honor, if I can have her
4 shown this document to see if we can refresh her memory?

5 THE COURT: For the record, identify what
6 you're showing her.

7 MS. TAYLOR: What I'm showing her are a couple
8 pages out of the biology manual for the Idaho State
9 Police Forensics Lab that is available online.

10 Q. So Ms. Nowlin, if you'll look at the
11 very bottom one, that's the one I'm having trouble
12 squaring with your testimony, if that refreshes your
13 recollection or helps me understand.

14 A. So what this is talking about is it may
15 be beneficial to make a qualitative statement about
16 evidence-to-evidence comparisons. However, there is
17 another section of our biology quality manual that
18 specifically states if it's a probative comparison, a
19 statistic must be provided.

20 But what this is saying -- so, for
21 instance, if you're in one room in a scene and there's
22 multiple swabs that are tested, we can say these are
23 consistent or these appear to be from the same unknown
24 individual. Now, if I am going to say these are from
25 John Doe, I have to provide a statistic for each item

1 and do a comparison of each item.

2 Q. Did I hear you say you could compare if
3 they're probative?

4 A. If it's -- which that wouldn't be, in
5 my mind, a probative comparison. We have multiple
6 items of evidence in the same room in a scene, we can
7 say they appear to be consistent with the same unknown
8 individual; that's not making any statement about who
9 that individual might be. If I'm making a statement
10 about who might be the source of that, then that is a
11 probative comparison and I need to provide a
12 statistic.

13 Q. Before you make the comparison where
14 maybe you write exclusion, you don't know if it's
15 excluded or included, though, is that right?

16 A. I'm sorry, could you repeat that?

17 Q. Yeah. Yeah.

18 Let me try and explain what I'm getting
19 at. I'm not understanding why 95.9.1 couldn't have
20 been manually looked at to do a manual comparison to
21 the sheath DNA just to say excluded or not, when
22 Male E was compared to multiple items of evidence and
23 it was excluded. But you don't know that until you do
24 the comparison; is that right?

25 A. Correct. So you can look at it

1 manually, but if we're now making a probative
2 statement, then we need to provide a statistic. And
3 Male E was also a single source, which is different
4 than a mixture of DNA from multiple people.

5 Q. All right. I don't think I have any
6 other questions. Thank you. Maybe I can take those
7 pages back from you.

8 THE COURT: Thank you.

9 You can call your next witness.

10 MS. TAYLOR: Matthew Gamette.

11 THE CLERK: Do you solemnly swear or affirm
12 that the testimony you're about to give now before the
13 Court will be the truth, the whole truth, and nothing
14 but the truth?

15 MR. GAMETTE: I do.

16
17 MATTHEW GAMETTE,
18 having been duly sworn, testified as follows:
19

20 DIRECT EXAMINATION

21 BY MS. TAYLOR:

22 Q. Good morning.

23 A. Good morning.

24 Q. Will you please state your name?

25 A. Yes. My name is Matthew Gamette,

1 M-A-T-T-H-E-W, G-A-M-E-T-T-E.

2 Q. How are you employed?

3 A. I'm employed with the Idaho State
4 Police Forensic Services, and I'm a laboratory system
5 director.

6 Q. What does that mean to be the
7 laboratory system director?

8 A. I oversee operations of the laboratory
9 system. I oversee anything from purchasing,
10 procurement, contracts, human resources type issues
11 and hiring, terminations. I also oversee things like
12 just how the laboratory operates day-to-day.

13 Q. How long have you held that role?

14 A. I've been with Idaho State Police
15 Forensic Services for just about 16 years, and I
16 believe I've held this current role for about ten.

17 Q. Do you have prior experience in a
18 similar line of work?

19 A. I do. Prior to working for Idaho State
20 Police, I worked for Washington State Patrol as a DNA
21 analysis and also a crime scene responder.

22 Q. How were you educated?

23 A. I have a bachelor's degree from Brigham
24 Young University; I also have a master's degree from
25 Brigham Young University, and then I have continuing

1 certificates from both West Virginia University and
2 U.C. Davis.

3 Q. Are you involved in the collaborative
4 group NTVIC?

5 A. I am.

6 Q. What is that group?

7 A. So that is the National Technology
8 Implementation Collaborative. So currently my role
9 there is to chair that group.

10 Q. As it relates to forensic investigative
11 genetic genealogy, what's the group's role with that
12 field?

13 A. So currently what we're working on, we
14 have several different subcommittees in our forensic
15 investigative genetic genealogy group. What that
16 group is focused on is anything from policies,
17 procedures, contracts, things of that nature, looking
18 at the implementation of that technology into public
19 forensic science laboratories.

20 Q. Why is that important?

21 A. Why is the work of the group important?

22 Q. Let me ask the question better.

23 Why is it important to have policies
24 and procedures?

25 A. In any public forensic science

1 laboratory, we want to make sure we implement
2 technology well, that we implement it in a robust way
3 that it can be relied upon for things such as courts;
4 and so we always want to make sure that when we're
5 implementing a technology that we take a look at how
6 that technology is being used and that we apply it
7 well in the public laboratory space.

8 Q. Is that important for public trust?

9 A. I believe so, yes.

10 Q. Are there other organizations that
11 you're involved in in the course of your work?

12 A. Yes. I'm involved with several other
13 forensic science organizations.

14 Q. How about ASCLD?

15 A. Yes.

16 Q. What is that one?

17 A. ASCLD, the American Society of Crime
18 Lab Directors.

19 Q. What is the purpose of that group?

20 A. So that's the group of laboratory
21 directors. It could be laboratory managers, quality
22 managers, laboratory leaders, in essence, are members
23 of that organization.

24 Q. What is your role with that group?

25 A. Currently I am -- I report to the board

1 of directors as the CFSO, the Consortium of Forensic
2 Science Organization's liaison for the organization
3 for ASCLD.

4 Q. Did you have a role in deciding that
5 Othram labs should contract with Idaho State Police
6 Forensic Labs?

7 A. I did have a role, yes.

8 Q. What was your role?

9 A. My role would be as the laboratory
10 system director making a decision on contracts that
11 would be awarded.

12 Q. Did you decide that Othram should
13 receive the contract?

14 A. I did not.

15 Q. Did you work on the contract with
16 Othram?

17 A. I need to answer that question in a
18 little bit different way than you asked it, if you'll
19 give me some leeway.

20 Q. Sure.

21 A. I did not work specifically on the
22 contract with Othram; however, I worked on the
23 specifications that led to a contract being awarded to
24 Othram.

25 Q. The specifications you worked on, did

1 those end up becoming part of the contract with
2 Othram?

3 A. Yes.

4 Q. What were those specifications?

5 A. So there were a lot of specifications
6 within the scope of work that we developed to send out
7 for a general bid process. As we bid -- as a state
8 agency, as we bid for a contract, we send out
9 specifications that anyone has to comply with as they
10 give us their documents and responses back on those
11 things; then we have the ability to look at and make
12 sure that they are compliant with those specifications
13 that we have sent out.

14 Q. What were the specifications for
15 Othram?

16 A. There were a lot of specifications sent
17 out on the request for proposals, intent to bid.
18 There were a lot of different specifications that were
19 sent out. Again, I have a recollection of some of
20 them; I don't have a full memory of all of them.

21 Q. Will you share with us what you do
22 recall?

23 A. So things in that contract would
24 specify that they use the Interim Policy. We also
25 would put things in there about them following

1 environmental protection type provisions the federal
2 government requires us to abide by. It also would
3 have other things like reporting requirements back to
4 us, billing procedures, a lot of different conditions
5 we put in that to specify how they are going to work
6 with us.

7 Q. When you say Interim Policy, are you
8 referring to the Department of Justice Interim Policy?

9 A. Yes.

10 Q. Did you care if they were an accredited
11 lab?

12 A. So at this time as we were looking for
13 a forensic investigative genetic genealogy vendor or
14 company to provide these services for us, we were not
15 aware of any companies at that time that were
16 accredited.

17 Q. Since that time, though, are you aware
18 that companies do become accredited?

19 A. Absolutely. Currently, there are
20 definitely companies that are accredited in these
21 services. At the time that this contract was bid,
22 there were none to my knowledge.

23 Q. Did you look at the procedures and
24 protocols of Othram before you decided?

25 A. So I don't recall specifically myself

1 reviewing those criteria. I know that there were
2 manuals, protocols that were provided back to us as
3 part of that bid. Generally, I would provide those to
4 others within our laboratory that were more qualified
5 than I was looking at the specific technology, and I
6 am not qualified in FIGG analysis.

7 Q. Do you recall if their instruments were
8 validated?

9 A. I do not recall.

10 Q. Would that be important to have their
11 instruments validated?

12 A. Validation is up to each laboratory and
13 how they accomplish that. I can't speak to the
14 working practices of Othram Laboratories.

15 Q. Does Idaho State Police Forensics Lab
16 validate their equipment?

17 A. Yes, we do.

18 Q. Is that important to do that?

19 A. To us as an accredited laboratory, yes,
20 that is an important part.

21 Q. How about retention of data or the
22 ability to go back and rebuild the work or look at the
23 work that was done?

24 A. So we retain -- in our cases, we retain
25 our electronic data, we retain any other notes and

1 things that we make as part of our case records, part
2 of our case file, we provide those to the
3 investigators and to the court as a normal business
4 practice.

5 Q. Did Othram do that?

6 A. In this case I believe they gave us a
7 report or what was identified as a preliminary report.
8 The contract specifies that they would keep any data
9 or other things associated with that. For our
10 purposes, we were most concerned that that data or
11 anything else not be released to any other parties,
12 and so our concern was more about data security, data
13 privacy. And so in this case I don't know if they
14 have other data or other records that they have kept,
15 they have retained. We had asked them, as part of the
16 termination in this case of our work, that they would
17 preserve those things or that they would communicate
18 with both the prosecutor's office and with Moscow
19 Police Department if any of that information was to be
20 disposed or whatnot.

21 Q. Okay. Keep it or tell somebody before
22 you get rid of it; am I understanding that?

23 A. Our specification was that it stopped
24 our process with them, that we were no longer in a
25 contractual obligation with them on this case.

1 Essentially, we were transferring ownership of
2 anything on this case between them and Moscow Police
3 Department and the prosecutor's office.

4 Q. The report that you ended up receiving
5 from them, are you aware that that report doesn't
6 provide details of how they did their work?

7 A. I have seen the report, yes. I have
8 seen what was in the report.

9 Q. Would you agree that what's in the
10 report is far different than what the Idaho State
11 Police Forensics Lab produces by way of notes and
12 photographs in connection with its work?

13 A. We were not provided with analytical
14 notes, we were not provided with data, to my
15 knowledge. We were provided with what was identified
16 to me as a preliminary report which contained some of
17 their genealogical work on the case and other things,
18 such as potential nationalities.

19 Q. Is that different than what you produce
20 when you produce a report at your lab?

21 A. It's hard for me to answer that
22 question because it's a different report, it's a
23 different type of analysis, and so I can't make a
24 qualification there. I can tell you in our DNA
25 reports, we release the report, we release the

1 analyst's notes. As a general practice, we have the
2 electronic data and other things available for
3 disclosure. But that's our general practice, I can't
4 speak to the process as Othram Labs and what they
5 disclose, nor can I speak to what is normal for a
6 release in a FIGG case.

7 Q. Are you familiar with how you come up
8 with a SNP, with that process where you get from a DNA
9 sample to a SNP?

10 A. In general, yes, but I'm not qualified
11 in FIGG analysis.

12 Q. Okay. I won't go too far with that.
13 Are you familiar with how you get from
14 a DNA sample to an STR sample for the lab's purposes?

15 A. Yes.

16 Q. Are there similarities between the two
17 processes from getting pieces of DNA to an end result,
18 profile, that you can use?

19 A. Similarities in process, as far as
20 extraction and quantitation of DNA, but as far as
21 instrumentation used, methods and those kinds of
22 things, very different processes.

23 Q. So some of the documents that Idaho
24 State Police Forensics Lab produces that show us those
25 results, those would be similar to what you would

1 expect to see with a SNP?

2 A. I would assume. Again, I'm not
3 qualified in FIGG analysis, so I can't speak to what
4 documents they may or may not produce.

5 Q. Let's move from there -- thank you for
6 that -- and let's talk about Othram being involved in
7 the case that winds up being why we're here today.

8 What communication did you have with
9 Othram on the early end of that process?

10 A. So to my recollection, our early
11 communication on this case was providing them with DNA
12 that they would be able to develop, hopefully, an
13 investigative lead for us on a case. After that
14 sample, to my knowledge, had been -- that we had
15 followed our processes through and that we had put a
16 sample into CODIS, that we had not received any hits
17 off of CODIS, and then we would proceed with the next
18 step of testing. We did have a contractual
19 relationship with them since early in, I believe,
20 2021, and so we did have a contract with them in
21 place.

22 Q. Was this the first case that Othram
23 worked pursuant to that contract?

24 A. No, I don't believe so.

25 Q. How did they get the DNA?

1 A. The DNA sample itself? That DNA sample
2 was delivered by Moscow Police Department in person to
3 them at Othram Labs.

4 Q. Did you have any role in that part?

5 A. I did.

6 Q. What did you do?

7 A. I accompanied the officer from Boise
8 down to Houston and down to the Othram laboratory. I
9 didn't have possession of the sample but I was with
10 the investigator that did.

11 Q. After that sample was delivered, did
12 you have communications with Othram further?

13 A. Yes.

14 Q. What were those?

15 A. So I had communications, to my memory,
16 with them about what type of analysis we were asking
17 them to do, also what type of searching. I remember
18 they asked specifically for consent to do certain
19 types of searching. We had to authorize things
20 through memos and whatnot of them doing certain
21 searching, specifically I believe it was FamilyTreeDNA
22 that they needed an authorization for. I remember
23 having significant discussion with them about Y-STR
24 testing and if or how that would be accomplished.

25 Q. Why did you want Othram to do Y-STR

1 testing?

2 A. So the reason for Y-STR testing is to
3 utilize different investigative databases that might
4 be out there. I don't believe in this case we ever
5 did Y-STR testing. A lot of the discussion was around
6 preservation of the sample, or as much of the sample
7 we could preserve, and so our recommendation to them
8 was to not proceed with that type of testing at this
9 time, to kind of see where we were able to go with the
10 traditional SNP testing with the whole genome
11 sequencing, and then we would maybe potentially
12 revisit Y-STR testing.

13 I do remember some discussion with
14 David Mittelman at Othram about if they were able to
15 bootstrap some of the whole genome sequencing in order
16 to develop a Y profile that could be searchable from
17 the data that they had already developed instead of
18 using additional sample to specifically develop a
19 Y-STR profile or any kind of a Y profile.

20 Q. What does that mean, bootstrapping?
21 Take me back. They have this DNA sample, and then do
22 they have -- have they done those steps to get to
23 their SNP before you want bootstrapping done, or at
24 what stage are you talking about?

25 A. Essentially, it was our understanding

1 that they were in the process of or had already
2 obtained a whole genome sequencing profile, and so our
3 question to them was is there a way to develop a Y-STR
4 profile from the genetic information that you already
5 have through the other method of testing.

6 Q. And that's what you mean by bootstrap,
7 add a different kind of analysis?

8 A. Correct.

9 Q. Why would you want to do that?

10 A. Again, to see if there was a potential
11 to search Y databases that might be available out
12 there to identify genetic lineages.

13 Q. What does that mean, "genetic
14 lineages"?

15 A. So a Y chromosome is passed down from
16 father to son, and so we would be looking to see if we
17 can identify a family line through tracking the Y
18 chromosome DNA from father to son, to grandfather, all
19 the way down to grandson and potentially over multiple
20 generations. So it would tie us into a family line
21 that could be investigated further.

22 Q. Did Othram bootstrap and get the Y-STR
23 for you?

24 A. To my knowledge, they never did
25 anything with Y-STR testing, and to my recollection

1 with my discussions with David, that wasn't possible
2 with the data that he had at that point.

3 Q. It was impossible?

4 A. That it was not possible, correct.

5 Q. Thank you.

6 A. I do not believe that was attempted.

7 Again, I'm not familiar with the technology that he
8 would have had to have used to do such a thing, so I'm
9 not aware if that was possible, if the technology
10 didn't exist, I just don't know.

11 Q. Okay. At some point did Othram talk to
12 you about the work they were doing?

13 A. Yes.

14 Q. And did they have a recommendation?

15 A. They did. They had at least one
16 recommendation that I remember.

17 Q. When was that conversation?

18 A. I don't remember exactly when that
19 conversation happened.

20 Q. Well, let's put it between -- well,
21 when did they get the DNA, to start with?

22 A. So they got the DNA November 22nd, I
23 believe.

24 Q. And when were they notified to stop
25 work?

1 A. I believe the notification, the
2 official notification was on December 10th, if I
3 remember correctly.

4 Q. So when they came back to you with some
5 recommendations, where was that in relation to the
6 stop work?

7 A. Probably early in December, I'm
8 guessing. The actual work, the laboratory -- what I
9 would call the wet work in the laboratory, would be
10 the first couple of weeks, probably, before they would
11 have turned it over to a genealogist to be searching
12 in the databases and those sorts of things.

13 Q. To make sure I'm with you, "wet work"
14 means DNA sample to where we get to the whole genome
15 sequencing and then where we get to a SNP -- I know
16 I'm skipping steps -- but that's the wet work?

17 A. Correct, the laboratory work, so
18 anything that would be done in the physical
19 laboratory: Handling the sample, putting it into
20 tubes, adding liquids, things of that nature that
21 would be done in the laboratory, sequencing on an
22 instrument, that would all be done in the first week,
23 several weeks.

24 Q. So after that they have a
25 recommendation for you?

1 A. Correct.

2 Q. What's their recommendation to you?

3 A. Their recommendation, to my memory, to
4 my recall, was that they had several individuals that
5 had the potential to be of interest in this
6 investigation. They asked us if -- to further their
7 family tree building, if we could be in contact with
8 individuals and see if they were willing to contribute
9 information into the databases that they were using in
10 order to further the family tree building and further
11 the geological work.

12 Q. And we're in a closed setting here, so
13 I'm going to ask you to give me the last name.

14 A. I don't recall the last name, I'm
15 sorry.

16 Q. Was it your understanding that these
17 were four brothers?

18 A. Yes.

19 Q. Okay. What did you do in relationship
20 to these four brothers?

21 A. So we did some cursory work, just
22 looking in publicly accessible information, literally
23 Google searches and things of that nature.

24 What our approach was is we didn't want
25 to be approaching people, especially with an

1 investigation of this nature, that really had nothing
2 to do with anything. We just wanted to make sure
3 there was some reason why Othram Laboratories was
4 asking us to go and ask these individuals to put their
5 DNA into the database that law enforcement can search.
6 So we just did some work to build just very cursory
7 family trees to see what connection these individuals
8 might have and to verify these individuals were indeed
9 brothers, things of that nature.

10 Q. Did you verify they were four brothers?

11 A. I don't know that we would use the word
12 verify, but we believed that the information was
13 reliable that they had given us based on the publicly
14 accessible information.

15 Q. Now, I know you said you can't remember
16 the last name of those brothers. We're here today and
17 Bryan Kohberger's name has been on the news for two
18 years, you know his name. That wasn't the last name.

19 A. That was not the last name.

20 Q. After you did the cursory work and the
21 family tree, what was the next thing you did in
22 relation to these four brothers?

23 A. We, at some point, and I don't remember
24 exactly when, we had asked our investigator,
25 Det. Vickie Gooch with the Idaho State Police, to

1 reach out to one of the brothers we believe had put
2 information into a genealogical database, ask him if
3 he would be willing to upload that into one of these
4 databases so they could further build out and use that
5 information.

6 She was, I believe, initially able to
7 contact the individual. He was skeptical about her
8 contact, and so there was another contact, a three-way
9 call made between myself, Vickie and this individual
10 for purposes of trying to validate this was indeed a
11 law enforcement investigation, this was indeed a
12 legitimate request, and at that point that individual
13 requested not to be contacted again, was not
14 interested in participating.

15 Q. During the time leading up to that
16 phone call when you were building your family tree, I
17 know none of the four brothers had the last name
18 Kohberger. That name didn't come up when you were
19 building the family tree either, did it?

20 A. No.

21 Q. After that brother said don't contact
22 me again, what was the next thing you did?

23 A. So I don't remember, again, exactly
24 when the timeframe was with that, but I know that
25 there were active discussions about having a phone

1 call with the agency and the prosecutor's office about
2 the work that was being done. They were requesting
3 updates from us of what is the Othram Laboratory
4 doing, where are you at in the investigation, those
5 types of things. We were giving them updates via
6 telephone, via telephonic conferences with them, just
7 giving them updates on we've delivered the sample,
8 we've done this, those sorts of updates. And then
9 they requested a meeting with us to talk about the
10 testing.

11 Q. These conferences, who participated in
12 those?

13 A. Most of the time, to my memory, it was
14 usually Idaho State Police detectives. The
15 prosecutor's office might have also been privy to some
16 of those discussions. Again, just general updates
17 about where we were in the process.

18 Q. Tell me about this meeting. It sounds
19 like there's a big meeting that happens.

20 A. There was a meeting, to my knowledge,
21 and I don't remember exactly when but probably the
22 morning of December 10th, when we had a meeting,
23 telephonic meeting is my memory, with representatives
24 from Moscow Police Department, I believe FBI had
25 representatives on the phone call, ISP, I believe

1 myself, ISP legal counsel, and I believe that the
2 colonel of state police was also on that phone call.

3 Q. What happened on that phone call?

4 A. In that phone call we were asked to
5 turn over any kind of investigative records that we
6 had, any kind of information that we had, to the FBI
7 team. They provided me with an email address to be
8 able to provide what they were requesting from us,
9 which was -- to my memory it was the two -- the login
10 information essentially, and it might have been other
11 things I'm not aware of, like packets and things, I'm
12 not aware of the technical terms, but basically they
13 were asking us to provide that information to the FBI
14 investigator.

15 Q. Did you do that?

16 A. Yes.

17 Q. Do you know what you provided to the
18 FBI investigator?

19 A. So what we asked for to be provided
20 were the two database searches or information so that
21 those could be independently searched, and we also
22 asked them to cooperate and provide any information
23 that they needed to be able to further investigate.

24 Q. When you say two databases, do you mean
25 the two genetic genealogy databases that allow law

1 enforcement to search?

2 A. Yes. To my knowledge, these samples
3 were searched in two genealogical databases that allow
4 searching by law enforcement, so GEDMatch and
5 FamilyTreeDNA I believe were the two that were
6 searched, and we were asked to provide those
7 credentials, that information, to the FBI.

8 Q. Do you know that GEDMatch has two
9 different databases, GEDMatch and GEDMatch PRO?

10 A. Yes.

11 Q. Is it because one of those allows law
12 enforcement and the other doesn't?

13 A. I believe that is correct.

14 Q. Okay. Idaho State Police Forensics
15 Lab's direction to Othram was to look only in the
16 databases that allow law enforcement search; is that
17 right?

18 A. Our direction to them was to follow the
19 Interim Policy per contract with them, and any other
20 communications we would have had with them would be to
21 follow the Interim Policy.

22 Q. Does that mean, yes, you expected them
23 to only search the allowed databases?

24 A. I believe that that is what would have
25 been communicated. That's our understanding of what

1 that Interim Policy means is they would search those
2 databases that are allowable to be searched by us as a
3 law enforcement entity.

4 Q. After Othram turns over whatever they
5 turn over to the FBI and you get the report and they
6 get paid, is that the end of it with Othram for this
7 case?

8 A. So they provided to us a report. After
9 we had asked them to turn over all of the information
10 to the investigating agency and to the FBI, they
11 provided us with what was identified as a preliminary
12 report. I believe they titled it that because it was
13 not a final report. The testing -- we had asked them
14 to terminate the testing, but they were not at a final
15 result of a name to provide to us, an investigative
16 lead to provide to us.

17 Q. Why was the decision made for the FBI
18 to take this over and not let Othram finish?

19 A. I don't know. I can't speak to that.

20 Q. In that meeting, there was nothing
21 stated about why we were going to do this?

22 A. I don't recall specific reasons, but
23 they had asked us to transfer everything to the FBI.

24 Q. Okay. Did you take a look at the two
25 profiles, the FBI's SNP profile and Othram's SNP

1 profile? Have you ever looked at those?

2 A. Did we look at those or did I look at
3 those?

4 Q. Did you?

5 A. I did not, no.

6 Q. Have you seen them?

7 A. No.

8 Q. Would it surprise you to know the FBI
9 profile was over twice as big as Othram's?

10 A. Again, I have no knowledge of what the
11 FBI did or didn't do. I had no knowledge or... yeah.

12 Q. How involved were you with the FBI's
13 process of their genetic genealogy?

14 A. I was not involved, other than to
15 provide the samples to where they asked us to send
16 those samples to, and then from that point I was not
17 involved in the process.

18 Q. Have you become aware that they
19 searched databases that are not allowed to be searched
20 by law enforcement?

21 A. Pure speculation is all I know, but I
22 have no firsthand knowledge of anything.

23 Q. Okay. Fair enough. Thanks for that.

24 MS. TAYLOR: Your Honor, if I can have just a
25 moment.

1 Q. I have a couple of questions for you
2 about some documentation.

3 A. Sure.

4 Q. The document that gave recommendations
5 for you to call some of the four brothers, where is
6 that?

7 A. So I believe that that was provided to
8 us telephonically. I don't think there was like an
9 official report. I don't think there was an email. I
10 think it was names provided telephonically, and then
11 those names were actually provided as part of that
12 report that came several days after the conclusion of
13 testing.

14 Q. Okay. So you recognized those names
15 from that report?

16 A. Yes. Those had been provided to us
17 before.

18 Q. The work that you were doing before
19 trying to call one of the brothers, where did you keep
20 your documents for that?

21 A. As far as the records that -- I'm
22 sorry, I'm confused on the question.

23 Q. Let me ask it better.

24 You did some work, research work before
25 you and Det. Gooch made the phone call to one of the

1 brothers and kind of built out a family tree and did
2 some other research. Where did you keep that?

3 A. Those were paper copies, and those were
4 just retained and then sent to Othram as part of us
5 communicating back to them, basically saying this is
6 the work we did, we're providing these back to you in
7 case they're helpful as you continue to build out the
8 family trees.

9 Q. Do you still have a copy of those?

10 A. Yes.

11 Q. Did you document your attempt to get a
12 voluntary sample from one of the brothers?

13 A. I do not believe so.

14 Q. Do you know if Det. Gooch wrote a
15 police report about that?

16 A. I do not know.

17 Q. Did she provide any of her notes to
18 you, her investigative notes?

19 A. Not to me. I don't know if she kept
20 notes.

21 Q. Okay. Did you watch her write anything
22 down?

23 A. I did not. We were telephonic, I
24 believe, at that point.

25 Q. It would be hard to see then.

1 Have you seen any documentation from
2 that December 10th meeting?

3 A. Not to my knowledge.

4 Q. Okay. Any documentation that's come
5 your way from the FBI's work?

6 A. Not to my knowledge.

7 Q. Have you turned over your work with the
8 genetic genealogy, the help you were giving Othram,
9 have you turned that over to the prosecutor?

10 A. I have not turned over physical copies
11 of anything. I believe that our agency complied with
12 the discovery request. I don't know exactly what was
13 provided as part of that discovery request. Certainly
14 it is in an email document from me to Othram
15 Laboratories, and as such, I would assume that that
16 would have gone as part of the discovery request.

17 Q. Are you talking about the discovery
18 request that the Defense made?

19 A. I'm not exactly sure. We were just
20 asked to comply. We know that at any point our emails
21 are discoverable, and I believe the way the agency,
22 the way that ISP handles discovery requests, large
23 discovery requests especially, is to do a, quote,
24 "email pull" of anything that might be related to the
25 case.

1 Q. I think that the area that I'm
2 concerned about -- and I do have a lot of emails, so
3 thank you for that -- the procedures and protocols
4 from Othram that you know about that you've read,
5 where are they?

6 A. So those protocols would have been back
7 in 2021, I believe, from when we initially did the
8 RFP -- I believe it's the RFP process, I'm not
9 completely familiar, it might be an intent to bid, I'm
10 not sure what to call the process. Regardless, when
11 that process was going through, they would have
12 provided those documents to us at that point, and I
13 believe those documents likely exist.

14 Q. Okay. Any of the work that Othram did
15 in getting from DNA sample all the way down to SNP
16 profile, where are they?

17 A. Where is the documentation of that? I
18 do not have that documentation. That was not provided
19 to us, to my knowledge. And I don't know everything
20 that was provided back to the laboratory potentially,
21 but to my knowledge we were not provided with that
22 information.

23 Q. Would Othram have it?

24 A. Potentially. I don't know.

25 Q. The work that they did to come up with

1 a name to give to you for further investigation, where
2 are those documents?

3 A. I don't know.

4 Q. And your documents, some went to Othram
5 but you still have a copy of those?

6 A. I do.

7 MS. TAYLOR: I think that's it. Thank you very
8 much. That's all from me for now.

9 MR. NYE: No questions, Your Honor.

10 THE COURT: Thank you. You can step down.

11 MS. TAYLOR: My next witness is Daniel Hellwig.

12 THE CLERK: Do you solemnly swear or affirm
13 that the testimony you're about to give now before the
14 Court will be the truth, the whole truth, and nothing
15 but the truth?

16 MR. HELLWIG: I do.

17 THE COURT: Go ahead.

18 MS. TAYLOR: Thank you.

19

20 DANIEL HELLWIG,

21 having been duly sworn, testified as follows:

22

23 DIRECT EXAMINATION

24 BY MS. TAYLOR:

25 Q. Good morning.

1 A. Good morning.

2 Q. Will you please state your full name?

3 A. My name is Daniel Hellwig; first name
4 D-A-N-I-E-L, last name, H-E-L-L-W-I-G.

5 Q. What do you do for a living?

6 A. I'm currently the forensic director at
7 Intermountain Forensics. We are a 501(c) (3)
8 nonprofit, and our main mission is pushing forward new
9 and cutting-edge DNA technologies, assisting different
10 agencies, law enforcement and otherwise, with
11 education, training and consultation on those. Our
12 main focus right now is to help fund these cases
13 specifically, and most of our mission is revolved
14 around forensic investigative genetic genealogy, or
15 FIGG.

16 Q. When you say help fund these cases as a
17 nonprofit, who do you mean?

18 A. A variety of different. We actually
19 allow people to submit cases that they may be having
20 problems getting the revenue and resources to move it
21 forward, and then we evaluate it. So this could be --
22 we've worked and tried to assist in -- mainly I think
23 most of our work is in smaller agencies that don't
24 have nearly as much resources to further their case
25 work with this technology, but we've done work with

1 law enforcement, medical examiner's offices and
2 defense, especially the Innocence Project.

3 Q. What did you do before you worked at
4 this nonprofit?

5 A. I've been in forensic DNA for 20-plus
6 years. I have a bachelor's in biology and chemistry
7 from Viterbo University and a master's in forensic
8 science from Marshall University.

9 I started my career at the Armed Forces
10 DNA Identification Laboratory as an intern there and
11 moved on to various public laboratories. I worked in
12 forensic DNA at New Mexico Department of Public Safety
13 and the Minnesota Bureau of Criminal Apprehension.

14 I then started in the private sector.
15 I worked for Sorenson Forensics in Salt Lake City,
16 Utah, in a variety of different jobs there.
17 Initially, I was the DNA technical leader, essentially
18 the quality manager of the DNA section, but moved into
19 executive management as the laboratory director.

20 In 2019, I began with Intermountain
21 Forensics as a founder. I'll refer to that sometimes
22 as IMF. We were -- up until July of last year, our
23 mission was not only funding cases, education
24 outreach, but also we established and operated a fully
25 functioning forensic DNA lab. Our mission in that

1 realm was to, again, continue with cutting-edge DNA
2 technology and specifically we sought out to operate
3 and utilize a forensic investigative genetic genealogy
4 support laboratory.

5 Q. What does that mean?

6 A. So our goal in this -- we had a fully
7 functioning laboratory in that we did what I'll call
8 traditional forensics, STRs, as mentioned previously,
9 but we also wanted to implement this new technology,
10 forensic investigative genetic genealogy and
11 laboratory processes behind it. Specifically in this
12 case you're talking about forensic snips, single
13 nucleotide polymorphisms --

14 THE COURT REPORTER: I'm sorry.

15 THE WITNESS: Single nucleotide polymorphisms.

16 THE COURT: So you need to slow down a little
17 bit. You don't enunciate particularly well, and so you
18 need to go slower.

19 THE WITNESS: I promise.

20 BY MS. TAYLOR:

21 Q. Let me see if I can understand your
22 work right before the 501(c)(3) getting into the
23 forensic investigative genetic genealogy world.

24 Do I understand that your work was to
25 do the part, all the long steps, until you get to the

1 SNP, and then it would be handed off for a genealogist
2 to do the other part of the work?

3 A. Beyond just identifying SNPs, it is to
4 generate an upload file, an end product, that would
5 then be handed off to an investigative genetic
6 genealogist to continue that research. So essentially
7 our laboratory started -- had the ability to start
8 from sample from evidentiary item, do DNA extraction,
9 which is essentially popping cells open, pulling DNA
10 out and washing all the residual material away; and
11 then traditional forensics, where you're doing short
12 tandem repeats, repetitive DNA that repeats over and
13 over and you simply count them, to our specific
14 targets, which was SNPs, where we did DNA sequencing,
15 looking at all the different letters within that
16 genome and pulling out the relevant single nucleotide
17 polymorphisms that were specifically associated
18 through genealogy, generating, through a pretty
19 extensive process, what I'll call an upload file.
20 These are files that contain all of these SNPs, single
21 nucleotide polymorphisms, that contain the information
22 that is needed for upload into these databases.

23 Q. Okay. I'm going to go back a little
24 bit with you. So in the traditional STR -- we've
25 heard some about that today -- you said splitting the

1 DNA open and washing it?

2 A. Yes. That's essentially the very
3 simplified version of DNA extraction. You can think
4 of this biological material, these cells, as little
5 tiny water-filled balloons with nuclear material, with
6 DNA, inside of it.

7 DNA extraction, similar to previous
8 testimony, is just popping those cells open, pulling
9 the DNA out and washing all the cellular garbage, if
10 you will, out to generate an extract. It can then go
11 down several different pathways, depending on what you
12 need.

13 Traditional forensic testing, STRs,
14 short tandem repeats, is taking that DNA and looking
15 at repetitive sequences and counting how many repeats
16 are there. The best way I can explain this is if you
17 had the word "cat" and that was the specific DNA
18 letters that you were looking at, you could repeat
19 that word "cat" eight times -- that would be a short
20 tandem repeat, cat repeated eight times -- I would
21 call that an eight. You have DNA from mom and dad, so
22 you have two copies of this, so you have an eight and
23 maybe another eight from mom and dad. The problem
24 there is that you're not actually looking at the
25 specific letters. So a three letter word like "dog"

1 would be completely different; we've got an eight
2 repeat STR and an eight repeat STR that have different
3 sequences but still have the same short tandem repeat
4 number.

5 SNPs, single nucleotide polymorphisms,
6 is actually looking at the DNA sequence. So if we
7 were to look at a SNP, let's say we were particularly
8 interested in the "a" in "cat," we would sequence that
9 DNA and then go into that sequence and say at this
10 location we have an "a", and we have an "a" from mom
11 and maybe an "a" from dad. That is the generation of
12 a SNP profile; same concept but we're dialing down to
13 the specific letter in question.

14 Q. Have you done both kinds of work?

15 A. Yes. In my -- before IMF, I worked at
16 several different laboratories, all using traditional
17 forensics, STRs and Y-STRs. In my work at
18 Intermountain Forensics, we did that but we also
19 focused on forensic SNP testing.

20 Q. If I understood the part about the
21 water balloon right, it's one water balloon, same
22 water balloon, same process of popping it open,
23 stripping out the stuff you don't need, and then it's
24 where you go from there that makes the difference
25 between an STR and a SNP, ultimately?

1 A. Correct. It's all associating to the
2 same DNA extract, and that's similar to what the Idaho
3 State Police lab does, as well.

4 Q. So the process of getting that DNA
5 water balloon open so that you can strip things off,
6 does it matter how you do that?

7 A. Well, there's a variety of different
8 ways to do that, but in forensics there's some
9 specific and kind of common tools that we use that the
10 process to get there can vary somewhat; however, it's
11 fairly standard practice to use some of the same tools
12 within the forensic DNA community.

13 Q. I think I understood the repeats as
14 looking for patterns, but the SNP is looking at the
15 individual characteristic?

16 A. Individual letter, nucleotide. So if
17 DNA is made up of billions and billions of letters,
18 STR is looking at repetitive sequences and counting
19 the repeats, and SNPs is looking at specific letters,
20 specific nucleotides on that genome.

21 Q. All right. I want to talk about that
22 whole process, how you get from a SNP to splitting the
23 water balloon open. I'm with you there. So what do
24 we do after we get that stripped off?

25 A. If we're going down the path of

1 forensic SNPs, there's a few different ways you can do
2 that. There's one way that is essentially a targeted
3 practice. We're looking at SNPs in question, and
4 we're going to focus on those SNPs and do what is
5 called an amplification PCR, basically a DNA
6 photocopier of that sequence, that specific letter and
7 a little bit around it, to specifically target a SNP
8 in question.

9 The other technique is something more
10 attuned to whole genome sequencing. Again, there's a
11 variety of different ways you can do this, but the
12 idea here is we're going to sequence the entire
13 genome, the entire length of DNA on this particular
14 extract, and then we are going to pull out the SNPs
15 that we need, the relevant ones that we're looking
16 for. This can be done -- I will refer to that as
17 whole genome sequencing, acknowledging the fact that
18 there's a variety of different ways you can accomplish
19 that.

20 Once you sequence the DNA, it comes out
21 off of the instrument in question, and there's several
22 different instruments you can use, but for the most
23 part it turns into raw data, and that raw data is
24 typically found in a file called a FASTQ file. This
25 raw data is massive, it has an insane amount of

1 information, and it's not refined in a way that we can
2 actually utilize it.

3 So the steps from taking that raw data
4 to actually getting that upload file, that end
5 product, for upload into these databases is
6 bioinformatics, essentially a software that goes into
7 this massive amounts of data and pulls out the things
8 that we're looking for.

9 Q. Is all software the same or all
10 bioinformatics programs, is that all the same?

11 A. No. Each -- as far as I can tell, each
12 laboratory has their own version of bioinformatics
13 that they use to get from sequence data into usable
14 results.

15 Q. If I understand where we are, we popped
16 open the balloon, we put the DNA in a sequencer,
17 created a raw data file called a FASTQ file, and now
18 we need to do bioinformatics to get a SNP.

19 A. Right.

20 Q. Okay. What happens from there?

21 A. So in the bioinformatic pathway, you're
22 doing multiple things. Again, you can think of this
23 as a DNA sequence that the sequencer has given you a
24 truckload of information; they're essentially puzzle
25 pieces. The first thing we are going to do is

1 re-emerging. So we are going to take all the puzzle
2 pieces that are the same and we're going to use them
3 to paint the best picture of that information. You
4 can think of this is we're sequencing this DNA, this
5 human genome, multiple times; hopefully 10, 15, 30
6 times. Our samples in forensics are typically
7 difficult, so we don't tend to get that much that
8 level of -- essentially, we are trying to sequence
9 this entire genome multiple time to add more context
10 in what we're getting. In merging, we're taking the
11 DNA sequences that we have multiple copies of and
12 we're combining them into one, the best fit for that
13 particular fragment of DNA.

14 Well, we still have puzzle pieces to
15 put together. The next thing is mapping. The
16 bioinformatic pathway will map all of these puzzle
17 pieces and put them into the human genome in the way
18 that they're supposed to be. That takes multiple
19 fragments and lines them up in the right manner. Once
20 it's mapped, we are going to start to be able to find
21 the particular SNPs that we're looking for. We have a
22 human genome with a whole bunch of different letters
23 in different positions. We can say, all right, these
24 are the relevant SNPs that we're looking for,
25 genealogy-based informative markers. We want to pull

1 these SNPs out, see what the call is there and send
2 that up to an upload file.

3 In some cases, we don't have all of the
4 information; we're missing some sequence data. We've
5 maybe gotten 80 percent of the genome and some of the
6 SNPs are missing. There's a process to fill in those
7 gaps called imputation. Imputation is in most
8 bioinformatic packages. Essentially, we know what the
9 letters are in front of this particular spot we're
10 missing and we know what the letters are behind what
11 this particular spot that is missing, so we can look
12 at all the human genomes and impute, estimate, the
13 most likely letter in the position that we're looking
14 for. Once we're through imputation and allele calls,
15 we're going to use this bioinformatic package to pull
16 out SNPs that we're looking for and put them into a
17 format that will be usable for upload into these
18 databases. At IMF, we actually generated two files;
19 once specifically to the GEDMatch PRO database and one
20 specific to the FamilyTree, FTDNA, database.

21 In these files, GEDMatch PRO, we
22 typically got around 550,000-plus SNPs that we were
23 looking for, and the FamilyTreeDNA database upwards of
24 600 to 650,000 SNPs. The end product there, though,
25 is a text file or some sort of upload file, which

1 could be in text format or Excel format, but
2 essentially what it is is a file with all of these
3 SNPs, the calls at the SNP locations, in a format that
4 allows them to be uploaded into the database. At this
5 point, we hand it off to an investigative genetic
6 genealogist to do the research.

7 Q. The upload databases, you mentioned
8 two, GEDMatch PRO and FamilyTreeDNA?

9 A. That's correct.

10 Q. Why did you mention those?

11 A. Those are the two databases that allow
12 law enforcement searches. They have specific terms of
13 service that give a portion of that database, those
14 that have consented to do so, to law enforcement to
15 search in for human remains in some cases and in
16 criminal cases.

17 Q. So in this lab process to get to the
18 SNP to get to the upload file, it sounds like there's
19 a lot of steps along the way.

20 A. It's a pretty complicated process, yes.

21 Q. Is it important to keep lab notes or
22 bench notes or have procedures or protocols?

23 A. Yes. And I think that is pretty
24 standard practice amongst forensic DNA testing
25 laboratories in general. You're going to adhere to a

1 quality management system. You're going to have
2 procedures, protocols and policies that tell you what
3 to do, tell you how to do it, tell you what samples to
4 use, what personnel can be -- can do the analysis and
5 technical review and so on and so forth. It's a whole
6 quality structure that gives support and credence to
7 reliable results, and that would include protocols,
8 SOPs, it would include case documentation, laboratory
9 notes about what you did, how you did it, chain of
10 custody documents, electronic records, as needed, and
11 hopefully at the end of it a report that includes
12 conclusions and information about what was done.

13 Q. Why do you want to do all that?

14 A. First of all, within the forensic DNA
15 community, it's a part of our accreditation process
16 and some of the standards that we adhere to as a
17 community. Second, it's just best practice. The
18 holding of the records, using them, creating them and
19 retaining them, you never know if you're going to need
20 to refer back to them in your own notes, or we mandate
21 a technical review of all of this data, so a second
22 quality analyst will look over all of your laboratory
23 notes, all the work you did and your reports and make
24 sure that they agree with it and would come out to the
25 same conclusions, and for discovery requests.

1 At IMF we have typical documentation
2 that we would send to our clients that would include a
3 report and all of the case notes and laboratory
4 documentation associated with that. Outside of that,
5 we oftentimes get requests for more than that
6 information: What is our validations, what is our
7 quality manual, competency test for our personnel,
8 their training and education, a whole list of support
9 documents that are within our quality management
10 system that also are important in accreditation of our
11 laboratory.

12 Q. Before you became a 501(c)(3), was your
13 laboratory accredited?

14 A. Even previous to becoming a 501(c)(3),
15 since the inception of the company in 2019, even
16 before we no longer did laboratory operations, we got
17 accredited by ANAB ISO 17025. That was on -- our
18 accreditation scope included traditional forensics,
19 STRs, Y-STRs, and eventually we included within our
20 scope forensic SNPs, massively parallel sequencing,
21 that encompasses accreditation for this whole genome
22 sequencing in support of forensic investigative
23 genetic genealogy that we did.

24 Q. Is there a set of guidelines or rules
25 that apply to work with DNA, to split that DNA water

1 balloon open?

2 A. Yes, and I think you've heard testimony
3 to that. There's accreditation standards. ISO 17025
4 is the big one, as well as the Federal Bureau of
5 Investigation Quality Assurance Standards. For
6 forensic DNA testing laboratories, those are common, I
7 would say more so almost required within the forensic
8 DNA community. And those are standards that dictate
9 our quality management system as a whole, what we do,
10 how we do it, how we support it, how we document and
11 how we report.

12 Q. Is that important so there's public
13 trust in what you do?

14 A. More so -- public trust for sure, but
15 reliability in reproducibility of results,
16 transparency and just ensuring a full quality behind
17 your conclusions and reports.

18 Q. Mr. Hellwig, you mentioned the size of
19 the two SNP profiles for GEDMatch PRO and
20 FamilyTreeDNA, 550,000 or 650,000 seem to be the
21 maximums. If you had a case where you had produced a
22 file to upload, an upload file, and it had, let's say,
23 600,000 in it, could you take that text file and turn
24 it into twice that big?

25 A. I'm not sure how we would do that, no.

1 An important note here, that was just
2 IMF's policy. We generated upload files specific to
3 each one of the databases. And that's the number we
4 had within our bioinformatic package, that's not
5 necessarily what would be true of others. That being
6 said, if, theoretically, we were to deliver our upload
7 file to our client and it, say, had 500,000 SNPs on
8 it, I don't know of a mechanism to add SNPs in that
9 manner without going back to our raw data.

10 Q. In this particular case, I know you
11 haven't gotten involved in all of the ins and outs,
12 but did we provide to you what we received in regular
13 discovery, the Othram file and the FBI file -- upload
14 files?

15 A. Yes, I did receive two upload files.
16 One was a text file that came from Othram Labs, and
17 one was an Excel file that came from the FBI.

18 Q. Is that also an upload file?

19 A. Yep, both of them are upload files.
20 They contain exactly that: A listing of SNPs, the
21 call and their location in a format that would allow
22 them to be uploaded to databases.

23 Q. What was the difference in size?

24 A. The FBI upload file had significantly
25 more SNPs called than the Othram file. I wasn't able

1 to go deep into it, I don't know exactly how many
2 more, but there was more SNPs called within the upload
3 file for the FBI than there was with the Othram file.

4 Q. And since the Othram file is smaller
5 and it's a text file, can you tell how the FBI got so
6 much more data, so many more SNPs?

7 A. No. That's kind of the important part
8 here, there's no documentation to say how this
9 happened. And that's really the important part,
10 right? I have no reason to believe that Othram
11 Laboratories did anything wrong to obtain their
12 profile, I just don't have the documentation to show
13 me how that came to be. Same with the FBI file,
14 there's no documentation or notes or bench or report
15 to say this is what I had, this is what I did and this
16 is now what I have, so I'm unsure of how that came to
17 be.

18 MS. TAYLOR: Thank you. Your Honor, if I may
19 have just a moment to check with my team.

20 Mr. Hellwig, that's all I have. The
21 prosecutor might have some for you.

22 THE COURT: Go ahead.

23
24 CROSS-EXAMINATION

25 BY MR. NYE:

1 Q. Mr Hellwig, I want to start with your
2 accreditation testimony. Did I hear you correctly
3 that your lab was accredited since inception in 2019?

4 A. Our laboratory was accredited for
5 traditional forensics. We began the accreditation in
6 2019, and I believe the first accreditation scope we
7 received was in 2020. For forensic SNPs, our
8 accreditation was January 20th of 2023, I believe.

9 Q. So you weren't accredited back in 2019
10 for forensic SNPs, correct?

11 A. Correct. We weren't actually doing
12 forensic SNPs at that time.

13 Q. But you were working on forensic SNP
14 cases prior to your accreditation, correct?

15 A. No. We specifically reserved working
16 on these SNP cases until we received our
17 accreditation.

18 Q. Okay. Do you recall describing the
19 accreditation process as a chicken-and-egg problem?

20 A. I don't.

21 Q. You testified you work at -- or work
22 for Intermountain Forensics?

23 A. That's correct.

24 Q. Do you post on their website?

25 A. Sometimes, yeah.

1 Q. Do you post in your name, Danny
2 Hellwig?

3 A. Certainly.

4 Q. You don't recall posting in June of
5 2020 about accreditation being a chicken-and-egg
6 problem?

7 A. I don't recall. I'm certain that --
8 that that statement is on there, and I would need to
9 recollect, certainly.

10 Q. I'm happy to show this to you.

11 A. That would be great.

12 MS. TAYLOR: May I also see it?

13 MR. NYE: Sure.

14 (Document handed to the witness.)

15 THE WITNESS: Yes -- yeah, I recall that.

16 BY MR. NYE:

17 Q. Okay. So do you now recall describing
18 accreditation as a chicken-and-egg problem?

19 A. Absolutely. It was several years ago.
20 I appreciate that refresh of memory.

21 Q. Sure.

22 In that same post, you talked about how
23 you appreciated the trust of those that were using you
24 before you were accredited, right?

25 A. Correct, yes.

1 Q. Do you feel like your work before
2 accreditation was less -- a lower quality than after
3 accreditation?

4 A. No, absolutely not.

5 Q. I also want to talk to you about -- you
6 mentioned that Intermountain Forensics does, or at
7 least used to do, some cases like this, right?

8 A. Yes.

9 Q. Assisting law enforcement?

10 A. Correct, yes.

11 Q. Roughly how many cases did you assist
12 law enforcement in?

13 A. That's a good question. We have a
14 running total there, but I'm guessing in the hundreds.

15 Q. Okay. And what was your role
16 personally in assisting law enforcement in those
17 cases?

18 A. I had several. I did consultations
19 upfront; I was qualified as an analyst for forensic
20 SNPs; I did some technical review, and in some cases I
21 distributed files to our clients.

22 Q. And when you say in the hundreds, you
23 mean you went through that whole process you talked
24 about with Ms. Taylor in hundreds of cases?

25 A. Yes.

1 Q. Developing a SNP profile?

2 A. I believe so, yes.

3 Q. Okay. And in all of those cases were

4 you successful in developing a SNP profile?

5 A. No.

6 Q. In roughly how many cases were you

7 successful in developing a SNP program?

8 A. We were about -- at the end of

9 laboratory operations, we were about 80 percent,

10 somewhere in that range.

11 Q. So 80 percent of hundreds?

12 A. Yeah, I believe so.

13 Q. In the cases you successfully developed

14 a SNP profile, did you learn medical information about

15 the individuals whose DNA you were looking at?

16 A. No.

17 Q. Did anyone at Intermountain Forensics

18 learn medical information about those people?

19 A. No.

20 Q. When you develop -- I believe you

21 called it an upload file; is that correct?

22 A. Correct.

23 Q. What does an upload file look like if

24 you just open it on a computer?

25 A. It's a text file, a very, very big --

1 again, it comes in different formats, but essentially
2 what it is is a text file. It is a big text file that
3 has hundreds of thousands, in our case, of SNPs that
4 have a position, a name, what chromosome they're found
5 on and the actual letters that we're looking for.

6 Q. So if you provided that upload file to
7 someone that didn't have any training or experience in
8 genetics, would they be able to read it?

9 A. Not -- not in so much words. There's
10 some headers on there, I guess, that you could -- that
11 you could -- that would be narrative, but the
12 molecular biology would be pretty complicated.

13 Q. So let me ask it this way, I guess: If
14 you were to hand that upload file to your average
15 police officer and ask them whether or not the person
16 whose DNA you are looking at would have cancer, would
17 that officer be able to do that?

18 A. No.

19 Q. What additional steps would you need to
20 take to learn medical information from a SNP program
21 above and beyond what you were doing at Intermountain
22 Forensics?

23 A. Well, SNPs are informative to a variety
24 of different things. So what we're looking for is
25 genealogy informative markers or ancestry link

1 informative markers. To find health information or
2 phenotypical, like, hair color, eye color, you need to
3 look at different SNPs. There's a hoard of research
4 on what medical information is out there and what SNPs
5 are probative. To gain access to those SNPs, you
6 would have to go back into the bioinformatics, pull
7 the information from the raw data specific to the
8 medical SNPs that you're looking for. That's not
9 something we did at IMF.

10 Q. So if I'm understanding correctly, at
11 IMF you developed SNP profiles but they were specific
12 for ancestry?

13 A. Genealogy and ancestry, yes.

14 Q. Why didn't you develop SNPs related to
15 medical information?

16 A. That's not part of our scope. We are a
17 forensic DNA testing laboratory, we're generating FIGG
18 profiles for the support and upload into these
19 genealogy databases. It wouldn't be relevant nor
20 probative nor appropriate.

21 Q. Did you -- when you helped these law
22 enforcement agencies, did you ever follow those cases
23 to see if there were successes at the end?

24 A. Sometimes. We delivered files to our
25 partners. In some cases we had an investigative --

1 forensic investigative genetic genealogy team that
2 worked the cases on the investigation side, but in
3 some cases our clients would come back to us and let
4 us know that they've gotten a result or they have had
5 a case resolution.

6 Q. And you participate in the -- I don't
7 know exactly what you called it -- in the FIGG
8 community. Would you consider yourself a member of
9 the FIGG community?

10 A. I guess, yeah. There's a variety of
11 different groups, I guess, and message boards and
12 information pathways, and I try to be a part of that
13 where I can.

14 Q. As a member of the FIGG community, did
15 you hear about other people's success stories using
16 FIGG?

17 A. Absolutely.

18 Q. Have you ever heard of a FIGG case that
19 was successfully solved using medical information?

20 A. No, never.

21 MR. NYE: Just one second, Your Honor.

22 No further questions.

23 THE COURT: Any redirect?

24 MS. TAYLOR: Yes, thank you.

25

1 REDIRECT EXAMINATION

2 BY MS. TAYLOR:

3 Q. Full genome sequencing is the whole
4 genome, everything; is that what that means?

5 A. Yes. The whole genome sequence is the
6 attempt to sequence the entire genome, if possible.

7 Q. Now, I heard you talking to the
8 prosecutor about what you didn't look at with medical
9 information, but I thought I heard you talk about,
10 when you got down to the SNP, those SNPs weren't
11 called from the whole genome. Did I hear that right?

12 A. I would have to rephrase that a little
13 bit.

14 Q. Please do.

15 A. When we're dealing with whole genome
16 sequencing, we're attempting to sequence the entire
17 genome, and it turns into that raw file, that FASTQ
18 file that I mentioned before. Now, the next step is
19 the bioinformatic pathway. The bioinformatic pathway
20 is going to be targeting specific SNPs in question
21 that we want to solve the question for, we want to
22 answer the question for. In our case, these are
23 genetic genealogy or ancestry informative markers,
24 those SNPs that provide information for genealogy and
25 ancestry. The bioinformatics that we would use at IMF

1 would be specifically targeting those particular SNPs.
2 But the raw data, the sequence data, still has the
3 entire list of SNPs, we just aren't pulling that piece
4 of information out.

5 Q. So if you handed me a case with your
6 notes, protocols and procedures, I could look at what
7 you did at whole genome sequencing and know you were
8 targeting only genealogy SNPs; would that be fair to
9 say?

10 A. With the right knowledge base, yes.
11 The list of snips are included, where they are and the
12 name on the upload file are all there. You can do the
13 research to look at that and say, okay, these are
14 genealogy or ancestry informative markers.

15 Q. If I had a file with notes that talked
16 about how bioinformatics was used, what to produce,
17 what kind of SNPs to produce, and handed it to
18 somebody like you, could you tell me these are the
19 ones that go to ancestry issues, that go to genealogy
20 issues, if I had the notes from somebody else?

21 A. I would have to do some research, to be
22 honest with you. The SNPs in question that are --
23 that we're using are all derived from these genealogy
24 databases, so it's the GEDMatch PRO, FamilyTreeDNA,
25 Ancestry.com. Those are the ones who have decided

1 which SNPs to use, and we just use them as a tool. So
2 what is the SNPs that best upload into the FamilyTree
3 DNA law enforcement database or GEDMatch PRO. And so
4 when we are bioinformatically pulling out the SNPs,
5 we're doing so under the direction of what they want
6 from us. Could I determine if there's medical
7 information within those SNPs or SNPs with medical
8 information, yes, but it would be a lot of research.

9 Q. I just have a couple of questions for
10 you about what the prosecutor talked about besides
11 that. He asked you about the chicken-and-egg problem
12 and different cases you'd done and the hundreds of
13 cases that you've done before. You told us that it's
14 important to have protocols and procedures and keep
15 your information, keep your notes. Did you do that in
16 those cases?

17 A. Oh, yes. Yes. Within the quality
18 management system as a whole and adhering to our
19 procedures and protocols and the accreditation
20 standard that we derive to, it's all that. It's case
21 documentation, laboratory report, and then the
22 foundation behind it: Validation summaries,
23 competency testing for personnel, their educational
24 requirements. All that has been done in those cases
25 and adhered to our own internal policies.

1 Q. Thank you. That's it for me.

2 THE COURT: Thank you. You can step down.

3 Does defense have other witnesses?

4 MS. TAYLOR: Your Honor, for the IGG I have one

5 other witnesses this morning.

6 THE COURT: How long is that one?

7 MS. TAYLOR: I think she's a little bit longer.

8 THE COURT: Let's take 30-ish minutes for

9 lunch.

10 (Lunch Recess.)

11 THE COURT: We are back on the record. The

12 defendant and counsel are all present.

13 Defense may call their next witness.

14 MS. TAYLOR: Dr. Leah Larkin.

15 THE COURT: Go ahead.

16 MS. TAYLOR: Thank you.

17

18 LEAH LARKIN, Ph.D,

19 having been duly sworn, testified as follows:

20

21 DIRECT EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Will you say your whole name?

1 A. Yes. My name is Leah Larkin, and it's
2 spelled L-E-A-H, and the last name is L-A-R-K-I-N.

3 Q. What do you do for work?

4 A. I'm a genetic genealogist.

5 Q. What kind of background and training do
6 you have?

7 A. I have an undergraduate degree in
8 biology from Swarthmore College in Pennsylvania, and I
9 have a Ph.D in biology, specifically in the field of
10 botany, from the University of Texas at Austin.

11 Q. How long have you worked in genetic
12 genealogy?

13 A. I started doing it as an amateur in, I
14 believe, 2013, and I started taking professional
15 clients in 2016.

16 Q. What does that mean when you take
17 professional clients?

18 A. Most of my clients are people like an
19 adoptee or somebody with an unknown father who is
20 trying to identify that particular relative. So I can
21 use their direct-to-consumer genealogy DNA test, build
22 family trees and work to identify their biological
23 family.

24 Q. So your work happens after the SNP is
25 produced --

1 A. Yes.

2 Q. -- do I understand that right?

3 A. Yes.

4 Q. Do you know what whole genome
5 sequencing is?

6 A. I do. I have not done it myself, but
7 my training in biology, I understand what it is.

8 Q. Based on your work in genealogy, are
9 you aware of what kinds of things are contained in the
10 whole genome sequencing file?

11 A. Right. As few of the earlier witnesses
12 have said, the genome is basically the blueprint, it's
13 the instruction manual for your body, so it -- first
14 of all, it makes you human, but it also can determine
15 your hair color, your physical traits, your eye color;
16 and there are a lot of genes that are going to be
17 associated with other things, like whether you have a
18 propensity for Alzheimer's or your height, your
19 weight. Basically, all of these traits that make us
20 unique for the most part are coded in our genes, our
21 DNA, in one or more genes.

22 Q. Is there any aspect in your field where
23 medical information can be known?

24 A. Yes. So the DNA tests that are used
25 for genetic genealogy are called microarrays. So when

1 you spit in a tube and send it off to one of these
2 companies, they're going to do what's called a
3 microarray.

4 A microarray test was designed for
5 biomedical research, they weren't designed for
6 genealogy. Genealogy was like an afterthought. These
7 are tests that were created specifically to target
8 physical traits, health traits, and it just happens to
9 be useful for genealogy as well. So even if I do a
10 test and don't look at those traits, they're still in
11 that data file.

12 Q. When you get the work, do you have to
13 make a choice as to what kind of database you're going
14 to do your research in?

15 A. Yes. So if I'm taking a client who is,
16 for example, an adoptee, I will have them test at
17 Ancestry and 23andMe. So those are two companies
18 where you actually have to send in a spit sample to
19 get into their databases, they don't take data files
20 from other sources.

21 The most cost-effective way to do this
22 for an adoptee is to test at those two companies and
23 then take one of the data files you get from, say,
24 Ancestry and upload it into the smaller databases;
25 that way you don't have to pay for a whole new test,

1 you don't have to wait to mail it off and have the lab
2 run it and get the results back, you can normally get
3 your results in a day or two after you do the upload.
4 So for an adoptee, there aren't really restrictions on
5 which databases you can use because they were all
6 generally created for amateur genealogists.

7 Q. We've talked a little bit today about
8 databases that have restricted use.

9 A. Yes.

10 Q. What does that mean?

11 A. So forensic genetic genealogy, which is
12 also sometimes called investigative genetic genealogy,
13 and then there's the combination FIGG, just because we
14 can't decide, that is restricted to two main database;
15 there's FamilyTreeDNA, which we call FTDNA for short,
16 and then there's GEDMatch. And those are the only two
17 databases of any significant size that allow FIGG
18 searching; Ancestry forbids it, 23andMe forbids it,
19 MyHeritage forbids it.

20 Q. Does GEDMatch have two sides to it?

21 A. Yeah. Actually, both GEDMatch and
22 FamilyTreeDNA have a specific upload process for
23 forensic kits; we call these tests a kit. So if
24 you're a normal, regular adoptee, you can upload
25 through the main layperson portal; but if it's a

1 forensic kit, it's supposed to go through a special
2 upload process. At GEDMatch they call that GEDMatch
3 PRO. FamilyTreeDNA does not have a special name for
4 it to my knowledge, but there is a special process
5 you're supposed to go to, and those kits that are
6 uploaded through the forensic portal are restricted in
7 which other kits they can see. The idea is that if
8 you don't want to participate in a forensic search, if
9 you're a layperson and you don't want to participate,
10 you can opt-out. And so a kit that is uploaded
11 through the forensic portal should not be able to see
12 a layperson kit that is opted out.

13 Q. Do you know why these databases have
14 these different, I guess, abilities or rules?

15 A. Yeah. So I'm sure we're all familiar
16 with the Golden State Killer case, at least we've
17 heard about it. That was the first big criminal case
18 that was solved using this type of genetic genealogy.
19 There had previously been one Doe, unknown remains,
20 that had been identified a few weeks earlier, but the
21 Golden State Killer case is the one that got all the
22 media attention. On the one hand, there were people
23 who were really excited about the prospect of
24 capturing violent criminals using this method. At the
25 flip side, there were a lot of genealogists who were

1 really concerned that they might be drawn into
2 criminal investigations without their knowledge or
3 consent.

4 And so the community split. There were
5 a lot of Facebook groups -- a lot of genetic genealogy
6 is just done through Facebook groups -- and some of
7 these Facebook groups just basically forbid it, you
8 can't talk about this at all, because it was causing
9 too much conflict within the community. I went to a
10 conference shortly after the Golden State Killer case
11 was announced and I was a speaker, and they pulled all
12 the speakers aside and said don't talk about it at
13 all, you're not even allowed to mention it at all.
14 This is how contentious it was in the community.

15 So the databases, realizing that this
16 was a problem, so Ancestry, 23andMe and MyHeritage all
17 very quickly changed their terms of service to say no,
18 you can't do this on our databases. GEDMatch and
19 FamilyTreeDNA, over the course of the past few years,
20 have kind of evolved these systems in response to
21 public outcry about privacy and consent and also in
22 response to some breaches and some missteps on the
23 part of the companies themselves and on the part of
24 some the genetic genealogists, so they evolved these
25 systems to allow the users to opt-out if they don't

1 want to participate.

2 Q. So the public outcry, that was people
3 that didn't want their profiles searched by law
4 enforcement?

5 A. Right. Prior to this, there had been
6 occasional discussions in the genealogy community,
7 people saying, oh, the cops are going to get our data,
8 and other people were like, no, they only use CODIS so
9 they're not going to use our databases. And it turns
10 out they were. The Golden State Killer case was being
11 investigated -- I'm not sure exactly when it started,
12 I think 2017, and he was arrested in April of 2018.
13 So law enforcement or law enforcement -- or
14 genealogists working on behalf of law enforcement
15 were, in fact, using the databases without the
16 knowledge or consent of the regular person
17 genealogists who were in the databases.

18 Q. So was it 2018 when the terms of
19 service used and people's privacy rights were
20 recognized?

21 A. So there's been a series of -- there's
22 a whole series of changes to the terms of service, so
23 I can't speak to precisely which dates and which
24 databases and which changes. I recall that
25 MyHeritage, within a few weeks of the Golden State

1 Killer being arrested, changed their terms of service
2 to explicitly say not in our database.

3 Q. All right. Let's talk about this case.
4 Were you brought on to help us in this case?

5 A. Yes. I was brought on to help you
6 interpret and understand what was done in terms of the
7 genetic genealogy for this case.

8 Q. What did you look at to do that?

9 A. Well, it's been a bit of a struggle
10 getting all of the material I would like to look at.
11 So I have seen basically photos of a giant kind of
12 poster scroll of a FamilyTree that I believe the FBI
13 built at Ancestry.com. I've seen pictures of a
14 whiteboard in which they have -- which they sort of
15 like hand wrote on the whiteboard a descendent tree,
16 so basically looking at some ancestors and mapping out
17 the descendant lines leading to certain DNA matches.
18 I've seen communications between -- in some cases, I
19 can see who the recipients are, in some I can't, but
20 I've seen a lot of email communications about the
21 case. Do you want me to go on?

22 Q. No. In the course of your work to try
23 to help us understand what happened here, did you
24 learn that first Othram worked on the case and then
25 the FBI took over?

1 A. Yes. So Othram, I believe they were
2 contracted, based on the invoice I've seen, they were
3 contracted to do the lab work, so to actually generate
4 a SNP profile, upload it to GEDMatch PRO and
5 FamilyTreeDNA, presumably through the approved
6 portals, and then I believe they were contracted to do
7 the genetic genealogy. But they were told to stop
8 work, I believe, on December 10th. And I've seen the
9 preliminary report they wrote.

10 Q. All right. Have you had a chance to
11 look at what happened after December 10th?

12 A. So after December 10th, there were some
13 email communications between -- the one I think was
14 most interesting to me had the names redacted, and it
15 contained screenshots -- so just to backtrack a little
16 bit, the Othram report reported two main DNA matches;
17 one of them shared 70.7 centimorgans of DNA --

18 THE COURT REPORTER: I'm sorry. 70.7?

19 THE WITNESS: 70.7 centimorgans. Do you know
20 how to spell that? C-E-N-T-I-M-O-R-G-A-N, and we just
21 abbreviate it cM.

22 The other one I think was 60. And
23 Othram's report specifically said those are low
24 matches. Othram figured out how those two people were
25 related to one another -- I believe they were third

1 cousins to another one -- and based on how much DNA
2 they shared with the crime scene profile, they thought
3 that the individual who contributed the crime scene
4 profile was descended from the second great
5 grandparent of those two matches, a man named
6 [redacted] and his wife, [redacted], I believe were
7 their names, and they were born in the [redacted].

8 BY MS. TAYLOR:

9 Q. When Othram quit work, were they
10 following a FamilyTree that they could have led and
11 come to Bryan Kohberger?

12 A. Yes. So based on my initial review of
13 what they did, the crime scene profile was most likely
14 descended from [redacted] and [redacted] or perhaps
15 from one of their siblings. It's hard to tell with
16 DNA because it's not -- not all third cousins share
17 exactly the same amount of DNA; some share more, some
18 less, it's just kind of a statistics game you play.

19 That couple had [redacted] children,
20 and so there conceivably could have been hundreds of
21 descendants of this couple. I haven't seen the full
22 tree, I've just seen they had [redacted] children.
23 Othram chose one of those children and had tracked
24 down, I believe, grandchildren, and there were four
25 brothers. They recommended testing one of those

1 brothers to get more DNA to get a closer handle on
2 where their crime scene profile might fit into that
3 family.

4 Q. So when Othram stops there and the FBI
5 takes over, you told us you saw something from
6 Ancestry.com. Would you have expected to see any
7 other kind of file with that file?

8 A. So this was basically like a giant
9 poster-sized printout of information from that family
10 tree. A family tree, when you build one at Ancestry,
11 it's stored in a specific kind of data format or, more
12 precisely, you can download the file in a specific
13 type of data format called a GEDCOM, and it's a
14 universal file format for genealogy trees. So you
15 could take a GEDCOM file and you could open it up in
16 standalone software on your laptop, you could upload
17 it to a different genealogy company. I have a GEDCOM
18 file for every single client case that I do. When I'm
19 finished with an adoptee case, I basically give my
20 client the GEDCOM file so they have a record of all
21 the work that I did. And I would have expected the
22 FBI to have that as well, but they did not turn that
23 over.

24 Q. You didn't see one of those?

25 A. I did not see one of those, no.

1 Q. Knowing that Othram finished their work
2 on December 10th and then the FBI took over and we've
3 heard that by December 19th, nine days later, they'd
4 made an identification, is that significant to you?

5 A. Yeah.

6 Q. Why?

7 A. Because Othram's matches were, as in
8 their own words in their report, those matches were
9 low. They were recommending testing these four
10 [redacted] brothers to get more information. If you
11 went out and if you approached those men, and even if
12 one of them said, yes, you can test my DNA, the
13 testing itself would have taken some time; getting a
14 kit to a person, getting the spit, sending it into the
15 lab, having it analyzed. And it wouldn't have led to
16 the crime scene profile because it was the wrong
17 family branch. So going from low matches to an ID or
18 at least a tip, whatever they were calling it, within
19 nine days, that right there told me they had gone into
20 a database they were not supposed to be in.

21 Q. Were there other ways that you were
22 able to confirm your belief?

23 A. Yes.

24 Q. What was that?

25 A. So one of them -- in one of those email

1 communications, I believe this is the one that had
2 both the sender and recipient redacted, there were
3 screenshots from GEDMatch, and I believe it said -- so
4 there were screenshots -- how do I put this -- in
5 GEDMatch -- GEDMatch has a very open system, so if you
6 are in GEDMatch and I am in GEDMatch and let's say we
7 were cousins, I could go in and look at my kit and I
8 would see you in my match list, but I could also go
9 into your kit and see me in your match list. GEDMatch
10 is just a super open database in that way. Any kit in
11 the system that is public, you can see their matches.

12 The one exception, however, is that if
13 there are forensic kits in the database and I am a
14 layperson and I'm looking at a layperson kit, I can't
15 see the forensic kits, they are invisible to me. But
16 there is an email communication that has a match list
17 from the perspective of somebody who only used the
18 initials S.C. I have no idea what this person's real
19 name is, in the database they are called S.C. This
20 screenshot is taken from the perspective of S.C. and
21 there is a match to the forensic profile from S.C.'s
22 perspective. That tells me that the forensic profile
23 was uploaded through the regular GEDMatch portal and
24 not the GEDMatch PRO forensic portal, because it
25 should not have been visible to S.C. And the email

1 says, "This one's ours."

2 And the other thing is that GEDMatch
3 will also tell you how many days a kit has been in
4 their system, and for that kit, for the match to S.C.,
5 it had been in the database for one day; but Othram
6 had uploaded it, I'm not sure exactly when, but I
7 would say six to seven to eight days prior, so it
8 should not have said the kit was only one day old.

9 Q. So based on that email and what you
10 saw, it confirmed your belief that the FBI used a
11 non-allowed --

12 A. Right. So that was one. There were
13 several lines of evidence; that was one of them that
14 stood out to me early on that they had uploaded
15 through the layperson portal of GEDMatch so that they
16 could see all the people that were opted out.

17 There were a couple of other matches.
18 One of them was actually 250 centimorgans, which is
19 something we get excited about in genealogy; and one
20 of them was, I think, was closer to 70 that were not
21 in the Othram report. If Othram had seen the one who
22 shared 250 centimorgans, that would have been in their
23 report. Like, their genealogists are good, they know
24 what they're doing; they would not have ignored a 250
25 centimorgan match. And based on those other two

1 matches, at that point I was pretty sure they had gone
2 into the MyHeritage database.

3 Q. While you were reviewing this
4 information so you could learn and try to figure out
5 what happened here, did you have any ability to call
6 anybody from the FBI and say, hey, what is going on?

7 A. I don't know who did the genealogy work
8 at the FBI.

9 Q. Why is that?

10 A. It's not in the information that we
11 received.

12 Q. Is that the part that was redacted?

13 A. I don't know if it was redacted or if
14 we just never got it. So there was that one email
15 that had redacted -- a redacted sender and a redacted
16 recipient; presumably, those were the people doing the
17 genealogy work. But other than that, I have no idea
18 who did the genealogy work at the FBI.

19 Q. Are there any other ways you know the
20 FBI went where they were not supposed to go?

21 A. There was one piece of information in
22 the discovery material that I did review. I believe
23 we asked them to turn over the match lists, and they
24 were like, oh, we can't turn over the whole match list
25 because it was 20,000 people. And that, actually,

1 right there was a big tip-off because if they had only
2 used GEDMatch PRO and only used FamilyTreeDNA, I think
3 at most they could have gotten to about 10,000. So
4 that right there tipped me off that they were in a
5 database that they should not have been able to be in.

6 Q. During the course of our work to try to
7 understand what happened here, did you assist us with
8 reviewing documentation and teaching us what else
9 should have been there that we needed to ask for?

10 A. What specifically?

11 Q. Well, about the databases they went in
12 and the match list and --

13 A. Right. So we've talked about what you
14 see in a match list. We've talked about the fact that
15 you can download the match lists at FamilyTreeDNA,
16 there's just a click button to download it and you'll
17 get a CSV file, which you can open in a word processor
18 or you can open in a spreadsheet program. At GEDMatch
19 you can also get the whole match list. So you would
20 have gotten that. I tend to do that for my clients
21 just so if I'm not online, I can still work through
22 their materials and I can report that back to them.

23 Q. And did you testify in a motion to
24 compel hearing to try to get this information so we
25 could tell and confirm what you believed about the FBI

1 going into a non-allowed database?

2 A. Yes.

3 Q. And do you know if, sometime after
4 that, we received confirmation that they did?

5 A. We did finally get a letter from the
6 FBI in which -- so we specifically asked to know which
7 of the matches were in which of the databases, and
8 they did not tell us that, but they did give us a list
9 of the databases they had uploaded to, and it included
10 FamilyTreeDNA, GEDMatch PRO, those are the two
11 databases they're allowed to use. But it also listed
12 GEDMatch, not GEDMatch Pro but GEDMatch. They're not
13 allowed to go into the regular GEDMatch portal. And
14 then, finally, they admitted they had uploaded to
15 MyHeritage.

16 MS. TAYLOR: Your Honor, I am at D26, and I can
17 pass this copy to the Court. I would ask that it be
18 shown to the witness first.

19 THE COURT: What's the red number on it?

20 MS. TAYLOR: Your honor, the red number is 999.

21 THE COURT: Notice of In Camera Submission?

22 MS. TAYLOR: Yes.

23 THE COURT: All right. Go ahead.

24 BY MS. TAYLOR:

25 Q. Dr. Larkin, will you thumb through

1 that. It's towards the back page.

2 A. Okay.

3 Q. Do you recognize that?

4 A. Yes. The second to the last page, it
5 says, "Below are the genealogy services utilized by
6 the FBI."

7 Q. And what does it tell you?

8 A. It says, FamilyTreeDNA, GEDMatch PRO,
9 GEDMatch and MyHeritage.

10 Q. Thank you.

11 MS. TAYLOR: Would Your Honor like the copy
12 they have there?

13 THE COURT: I think it's part of the record you
14 submitted, so I have a copy.

15 MS. TAYLOR: Okay. Thank you.

16 Give me just one minute to check with
17 my team.

18 I do have another question.

19 THE COURT: All right. Go ahead.

20 BY MS. TAYLOR:

21 Q. What is Promethease?

22 A. Promethease is a third-party site, so
23 it's not part of Ancestry, not part of MyHeritage --
24 actually, MyHeritage owns it now. It's a site where
25 you can take the SNP profile that you get from any of

1 the companies and upload it to the site, and it will
2 produce -- it will basically look for medically
3 informative SNPs in your profile and it will do
4 reports on them. I think it's like -- I don't know,
5 it's like a nominal fee, like \$12 or something, and it
6 will do a report of all of the SNPs that you have in
7 your profile.

8 Q. If you had my SNP, you could do that
9 and find out --

10 A. Yes. I can do it on -- if somebody has
11 done a genealogy test, for \$12 I can put it into the
12 Promethease system and get trait reports and health
13 reports.

14 Q. How extensive is that information you
15 could get?

16 A. It's pretty comprehensive. I mean, you
17 will get reams and reams of reports. I should say
18 that some -- how do I put this -- there are a lot of
19 traits that are controlled by multiple genes, and so
20 if a trait is controlled by multiple genes, I can't
21 say for certain, yes, you're going to go Alzheimer's,
22 no, you're not going to get Alzheimer's. It's more of
23 a risk factor. But you can look at the multiple
24 reports and see if they're, for example, giving you an
25 increased risk of Alzheimer's or whatever other traits

1 are in the system, if you have an increased risk of
2 breast cancer, prostate cancer or anything else out
3 there.

4 Q. For \$12?

5 A. Yes.

6 Q. Thank you. That's all my questions.
7 Hold on a minute, the prosecutor might have one for
8 you.

9
10 CROSS-EXAMINATION

11 BY MR. NYE:

12 Q. Good afternoon, Dr. Larkin.

13 A. Good afternoon.

14 Q. So you testified that when people come
15 to you wanting to do genealogy tests, you recommend
16 AncestryDNA and 23andMe; is that correct?

17 A. Yes.

18 Q. And one of the reasons you recommend
19 those two is because they have the most users in the
20 database; is that correct?

21 A. Yes.

22 Q. And the reason why that's important is
23 because when you're looking for ancestry, really the
24 best database for you is the one that has your closest
25 relatives in it, right?

1 A. Yes.

2 Q. But you can't know that until you use
3 the database, so you just use the one with the most
4 users?

5 A. There are two reason to start with
6 those two companies; one is because they have the
7 largest two databases, and then because you cannot
8 upload into those databases, you have to test with
9 them -- you can test at Ancestry and then get into the
10 MyHeritage and FamilyTreeDNA and GEDMatch databases
11 for trivial amounts of money, whereas if you tested at
12 FamilyTreeDNA first, the only way you're going to get
13 into the Ancestry database is by doing another test.

14 So I always recommend starting with the
15 biggest, and then if you want more databases, you can
16 upload into the smaller ones.

17 Q. And one of the reasons you might want
18 more databases is so you can get more matches, right?

19 A. Yes.

20 Q. You can gather more information that
21 way?

22 A. Uh-huh.

23 Q. And, typically, that's why people are
24 coming and asking you about these databases is because
25 they want more information about their family,

1 correct?

2 A. People generally come to me because
3 they need help interpreting the matches that they
4 have.

5 Q. I want to talk a little bit about the
6 number of users in these databases. So we've been
7 discussing the ones that were on that list you read
8 from the document the FBI indicated they used in this
9 case. Do you remember that list? On that list, do
10 you know which of those databases has the fewest
11 number of users?

12 A. I believe FamilyTreeDNA is currently
13 about 1.8 million; it's not an exact number, but I
14 think that's probably about where they are right now.
15 GEDMatch is, I think, a little over 2 million. And
16 MyHeritage recently announced they were at 9 million.

17 Q. And when you say 1.8 million, you mean
18 1.8 million other people that have utilized their
19 services and that you potentially could match with if
20 you utilize that service --

21 A. Yes.

22 Q. -- is that correct?

23 I have a couple of questions for you on
24 this Promethease. You mentioned it cost money, \$12, I
25 believe you said?

1 A. I think it's \$12.

2 Q. Why would someone utilize Promethease
3 instead of just reading their SNP profile themselves?

4 A. The SNP profile is basically just a
5 list of -- there's a location code, but it's going to
6 be something like RS23744, and you're not going to
7 know what RS -- I don't even know what number, I just
8 made that number up -- you're not going to know what
9 that SNP is, you're not going to know what gene it's a
10 part of, you're not going to know whether an A or T is
11 good or bad. Promethease takes your data file and
12 references published literature on what those SNPs
13 might impact in terms of traits and then produces a
14 report from that.

15 Q. So even you, for example, if you wanted
16 to know your medical information and you had your own
17 SNP profile, you wouldn't just attempt to read it, you
18 would use a service like Promethease?

19 A. Yes.

20 MR. NYE: No further questions.

21 THE COURT: Thank you.

22 Redirect?

23 MS. TAYLOR: No, Your Honor. Thank you.

24 THE COURT: Thank you, Doctor. You can step
25 down.

1 Is that the State's last witness on
2 this issue?

3 MS. TAYLOR: Defense. Yes, your honor.

4 THE COURT: Pardon me, Defense. I'm used to
5 the State going first on things, I apologize.

6 Does the state have witnesses?

7 MR. NYE: Your Honor, no. We're not going to
8 call Dr. Mittelman.

9 THE COURT: I'm trying to recall what I said
10 about argument on this issue, whether I said we could do
11 this publicly or not. I want the parties' input on that
12 as we make that decision, whether we can argue the
13 Franks and suppression issue on IGG publicly. I know
14 your position is we should, but in light of my ruling,
15 can you?

16 MS. TAYLOR: Your Honor, I'm going to refer to
17 what the FBI did in here; I'm going to refer to the
18 Department of Justice Interim Policy. I can probably
19 not name the four brothers that the state lab tested.

20 THE COURT: Okay. Can we avoid talking about
21 the fact of the four brothers? Understanding -- I
22 understand that's there, but I'm not gathering the
23 import of it on the issues at hand. I think you could
24 reference that there was some information that was
25 itself insufficient to generate a profile and I know

1 what you're talking about.

2 MS. TAYLOR: I'm trying to think of how I could
3 do it. I want to make sure I've made a really good
4 record here. The record is very important.

5 THE COURT: Of course.

6 MS. TAYLOR: I think I can talk about Othram's
7 recommendations that were attempted to be followed but
8 nothing worked. I think I can do that.

9 Maybe, after hearing the evidence, if
10 there's a ground the Court really wants me to stay
11 away from, other than saying the four brothers, maybe
12 that would be helpful to know. I'll do my best,
13 Your Honor, but I really want to make a good record
14 for Mr. Kohberger.

15 THE COURT: Counsel?

16 MR. NYE: Your Honor, I think we can probably
17 do the argument publicly. I don't need to reference the
18 brothers. I don't need to reference any of the specific
19 names. As I explained earlier, and as the Court has
20 seen, we didn't put on evidence one way or the other as
21 to whether the policy was followed, for example, so that
22 part of the argument is even assuming. From our
23 perspective, I think we can probably do the argument
24 publicly.

25 THE COURT: I thought I made it clear, what

1 I've tried to do is to open up evidence -- whether for
2 the State or against the State in this case -- that
3 potentially is not coming into trial that could
4 influence potential jurors. I didn't hear a lot of that
5 today. I think the fact that there was investigative
6 genealogy done in this case is not necessarily a secret,
7 given that we publicly talked about that we're going to
8 talk about that.

9 I think the more specific things about
10 what happened within that, it's best if we kind of
11 refer to that more generally in terms of like the four
12 brothers and whatnot. I think, frankly, it's
13 appropriate to discuss how law enforcement handled the
14 profiles that they received. I think it's appropriate
15 to talk about whether or not those profiles -- what
16 privacy is at issue in those profiles. I think that
17 obviously the State is going to talk about standing
18 and other issues and your client's specific privacy
19 rights with respect to this, so I think that's
20 appropriate.

21 So I think we're generally okay,
22 staying away from some of the specifics that I'm not
23 sure that ultimately would be admissible at trial.
24 Even if I were to say, well, admissible at trial the
25 whole IGG issue -- I'm not sure that's going to be

1 admissible at trial. I suspect the search, the trash
2 pull, is going to be admissible at trial and that
3 genealogic match, allegedly, to Mr. Kohberger's
4 father, as I understand it, and the lack of attempt to
5 figure out I think -- what I'm understanding, at least
6 from the testimony, the attempt to figure out the
7 mixed profile. So I think that's all fine.

8 The preference is staying away from the
9 specifics as to what those genealogy searches showed
10 more specifically that we talked about, the brothers
11 and the names of individuals who were testified to.
12 If that makes sense?

13 MS. TAYLOR: It does. We had an affidavit
14 attached to the back, I think, of our reply briefing on
15 the suppression issue. I want to make sure the Court
16 looks at that, that's admitted as evidence, and I
17 probably don't want to refer to that publicly.

18 Would you like my copy?

19 THE COURT: What was the date of filing?

20 MS. TAYLOR: It should have been the 19th.
21 December 19th.

22 THE COURT: What was the name of the document?
23 Reply to? Objection to?

24 MS. TAYLOR: This was the Reply to the State's
25 Objection to the Motion to Suppress IGG Material.

1 THE COURT: It's not showing on the 19th -- oh,
2 here we go. It was on the 20th.

3 What is it you want to reference in the
4 argument with respect to this affidavit?

5 MS. TAYLOR: Standing, Your Honor. I don't
6 need to reference that particularly, I just wanted to
7 draw the Court's attention to it.

8 THE COURT: In particular the standing that the
9 affidavit suggests that the Unknown E was Mr. Kohberger,
10 is that what I'm reading?

11 MS. TAYLOR: No, that there was a sample within
12 the trash that was Mr. Kohberger's.

13 THE COURT: Okay. I'm not sure the State's
14 arguing that there's no standing as to the trash. I
15 think the standing argument related to the genetic
16 testing through the companies and to the objection to
17 the testing of materials found at the crime scene.

18 Am I incorrect about that?

19 MR. NYE: Your Honor, we did assert in our
20 briefing standing, it was kind of in passing in the
21 sense that -- we think the fact that it was a trash pull
22 resolves that issue --

23 THE COURT: I appreciate the trash pull legal
24 issues in terms of privacy standing, but in terms of
25 standing of "this is not Mr. Kohberger's DNA so why am I

1 hearing from him" standing, which is part of what you
2 argued on the IGG information --

3 MR. NYE: Correct.

4 THE COURT: -- there's that issue. I don't see
5 that impacted here because it sounds like some of his
6 DNA was in that trash. And then there's the standing
7 issue, as I understand it, related to the extent that
8 the Defense is not conceding that the DNA found on the
9 knife sheath was Mr. Kohberger's, he has no position to
10 object to the testing of the DNA and the knife sheath.

11 MR. NYE: Correct.

12 THE COURT: I don't see there frankly is an
13 argument as to the standing issue of "not his DNA" as it
14 relates to the trash pull. That's just how I see it.

15 If you think that's different and you
16 need to make that argument, you need to let me know so
17 I know what we're getting into.

18 MR. NYE: No, Your Honor, it's not different
19 than that. What happened is in the opening brief, they
20 asserted there was DNA found in there, including an
21 unidentified male. In the response, I said, Well,
22 that's not standing, you can't just say unidentified
23 male. In the reply they attached this saying, Well, we
24 looked at it and it was his. That's sufficient. I
25 don't plan on arguing that point.

1 THE COURT: All right. Are we all square then?

2 MS. TAYLOR: I think so.

3 THE COURT: If you have a question of doubt,
4 ask to approach and we can go offline real quick. I
5 would rather err on the side of being cautious than not.

6 MS. TAYLOR: May I have five minutes?

7 THE COURT: Oh, no, we're going to take more
8 than that because I need the public to be notified. So
9 we're going to take at least 15, 20 minutes.

10 MR. NYE: Your Honor, can I just briefly ask,
11 we have some of the victims in the hallway. I guess
12 they've been told by somebody they can come in when the
13 hearing was open.

14 THE COURT: I'm not sure who would have told
15 them that.

16 MR. NYE: I don't know either, that's just what
17 they're representing to us. We didn't understand that
18 to be the Court's --

19 THE COURT: The problem is I don't want to have
20 to chase them out.

21 MR. NYE: Absolutely. Understood completely.

22 THE COURT: Sandra can have a TV in the
23 conference room they can watch it on, that's fine.

24 MR. NYE: Okay. Thank you, Your Honor.

25 THE COURT: And then my understanding is we can

1 then go into the next evidentiary phase without a
2 problem and it can be public, correct?

3 MR. NYE: Yes, from our perspective,
4 Your Honor.

5 MS. TAYLOR: Your Honor, I think our team might
6 be a little bit confused about that. I think we thought
7 that Franks might be next but --

8 THE COURT: No, after the Franks.

9 MS. TAYLOR: Okay. So I'll do suppression IGG,
10 and then --

11 THE COURT: We'll do the argument on that,
12 unless you want to just go straight into the evidence
13 and come back to the argument on the Franks IGG --

14 MS. TAYLOR: Okay.

15 THE COURT: -- and do it together with the
16 suppression stuff.

17 MS. TAYLOR: No. I planned to do that when I
18 did all of Franks, to address the entire Franks. I
19 think I'm confused about when the Court wanted me to do
20 that. If you want to take more evidence today -- if we
21 are going to argue IGG and be done, and then if the
22 Court wants to finish with evidence today, and then I
23 will do Franks tomorrow, argument, the proper argument?

24 THE COURT: So my preference is, because I
25 don't want to get into an evidentiary phase of Franks

1 other than the issue of IGG, is to argue your Franks
2 motion next, including the IGG and your proffer for the
3 other Franks issues, and then we can go into evidence on
4 the suppression issues. Does that make sense?

5 MS. TAYLOR: That does make sense and that's
6 perfectly fine. I might need a minute to pull that box
7 out after we're done with this argument, if that's okay?

8 THE COURT: Sure. You can always have a minute
9 when you need it.

10 MR. NYE: Your Honor, I'm sorry to complicate
11 things, but just to be clear. So over here we've split
12 that, Ms. Jennings is handling the Franks and I'm
13 handling the direct IGG suppression.

14 Is that okay if we split it that way?

15 THE COURT: Sure.

16 MR. NYE: Thank you.

17 THE COURT: Again, my thought was we do all of
18 Franks, including the IGG stuff, next. Because I don't
19 want to take evidence that is then going to be said is
20 part Franks, because if the State's then asserting it, I
21 think I've cracked the egg on whether or not I can
22 decide the issue prior to a Franks hearing. So that's
23 why I want to have it wrapped up before I take more
24 evidence. Okay?

25 MR. NYE: Sounds good.

1 THE COURT: All right. We'll take about 20
2 minutes to let the public have notice.

3 (End of closed proceedings.)

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REPORTER'S CERTIFICATE

STATE OF IDAHO)

COUNTY OF ADA)

I, CHRISTIE VALCICH, Certified Court
Reporter of the County of Ada, State of Idaho, hereby
certify:

That the foregoing pages comprise a
full, true and correct record of the proceedings in
the above-entitled cause; that said proceedings were
taken by me stenographically and thereafter reduced to
typewriting under my supervision; that I am neither
counsel for or related to, nor employed by any of the
parties to this case and have no interest, financial
or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set
my hand this 4th day of February, 2025.

Christie Valcich

CHRISTIE VALCICH, CSR-RPR
Ada County Courthouse
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Boise, Idaho